

No. 14459

United States
Court of Appeals
For the Ninth Circuit.

JOHSEL NAMKUNG,

Appellant,

vs.

JOHN P. BOYD, District Director of Immigration and Naturalization at the Port of Seattle, State of Washington,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Western District of Washington,
Northern Division.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States for
the Western District of Washington, Northern
Division

No. 3670

THE UNITED STATES OF AMERICA, ex rel.
JOHSEL NAMKUNG,

Petitioner,

vs.

District Director of Immigration and Naturalization
at the Port of Seattle, State of Washington,
JOHN P. BOYD,

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable Judges of the United States
District Court for the Western District of
Washington, Northern Division:

The petition of Johsel Namkung, by and through
his attorneys, the undersigned, respectfully shows
as follows:

I.

Petitioner is now held in custody in restraint of
his liberty by color of the authority of the United
States and he is presently detained in the Immi-
gration Station, Seattle, King County, State of
Washington, within the Western District of Wash-
ington, Northern Division.

II.

Petitioner is held pursuant to a detention order
of the Immigration and Naturalization Service and

is being held for immediate deportation to South Korea.

III.

Petitioner was served with a warrant of arrest on July 25, 1952, and a hearing under said warrant was thereafter held pursuant to authority contained in and jurisdiction conferred by sections 19 and 20 of the Act of February 5, 1917, as amended (8 U.S.C. 155, 156).

IV.

That at a subsequent hearing upon said warrant before the Immigration and Naturalization Service a charge was lodged under section 241(a)(1) of the Immigration and Nationality Act that petitioner was at the time of entry a member of a class of aliens excludable by the Act of October 16, 1918, as amended, being an alien who was affiliated with the Communist Party of the United States and petition on February 19, 1953, was ordered deported from the United States on the lodged charge only.

V.

That Act of June 27, 1952, c. 477, Title II, Chapter 5, section 243, 66 Stat. 212(h), (8 U.S.C.A. section 1253(h)), provides as follows:

“The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution and for such period of time as he deems to be necessary for such reason.”

VI.

Petitioner in his Immigration file (file No. A6 795 007) on April 15, 1953, submitted a 6-page statement of why petitioner feared deportation to Korea.

VII.

Petitioner on or about October 27, 1953, at the request of respondent herein and in affidavit form, submitted a formal request for stay of deportation and in a 5-page affidavit submitted material to support petitioner's claim of persecution in the event of his deportation to Korea.

VIII.

On or about December 10, 1953, a hearing was held before Mr. Robert L. Needham of the Immigration and Naturalization Service, at which time, petitioner gave sworn testimony and introduced exhibits and evidence, all bearing on his claim of physical persecution in the event of his deportation to Korea.

IX.

That no evidence whatsoever has been introduced to controvert the testimony of petitioner in person and by affidavit and the testimony of his witnesses.

X.

That petitioner has exhausted his administrative remedies in this action.

XI.

That jurisdiction of this court arises under Section 2241, Title 28, United States Code, in that peti-

tioner is imprisoned under and by color of the authority of the United States, and he is in custody in violation of 66 Stat. 212(h) set forth above in that the Attorney General has made no finding of the fact that petitioner will not be subject to persecution in the event of his deporation to Korea, or if such a finding has been made by the Attorney General, it is arbitrary and without basis in fact.

Wherefore, petitioner prays that a writ of habeas corpus be issued liberating petitioner, or in the alternative petitioner prays that the Honorable Court issue an Order to Show Cause directing the respondent to show cause why the writ should not be granted, and for such other and further relief as to the court may seem just and proper, and pending the determination of the issues herein, that he be released on bond of \$500.00.

MacDONALD, HOAGUE &
BAYLESS,

By MacDONALD, HOAGUE &
BAYLESS,

Attorneys for Petitioner.

Duly verified.

[Endorsed]: Filed March 26, 1954.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

This Matter having come on before the undersigned District Judge of the above-entitled court, in open court, on the petition of Johsel Namkung for a writ of habeas corpus, and the court having considered said petition, and being advised in the premises; now, therefore,

It Is Hereby Ordered that John P. Boyd, District Director of Immigration and Naturalization, Seattle, Washington, or such other person as may be temporarily acting in the capacity of District Director of Immigration and Naturalization, be, and he is hereby ordered to appear before the undersigned judge of the above-entitled court at his courtroom in the United States Courthouse in the City of Seattle, King County, Washington, at the hour of 11 a.m. on Monday, the 5th day of April, 1954, then and there to show cause, if any cause there be, why the prayer of Johsel Namkung for a writ of habeas corpus, directing that he be forthwith temporarily released from custody of said Immigration and Naturalization service, should not be granted. . . .

Done in Open Court this 26th day of March, 1954.

/s/ WILLIAM J. LINDBERG,

District Judge.

Presented by:

/s/ KENNETH A. MacDONALD,

Attorneys for Petitioner.

[Endorsed]: Filed March 26, 1954.

[Title of District Court and Cause.]

RETURN TO THE ORDER TO SHOW CAUSE

John W. Keane states that he is an attorney with the United States Department of Justice, Immigration and Naturalization Service, Seattle, Washington; that in his official capacity he is authorized to make in behalf of John P. Boyd, District Director and respondent herein, and hereby does make the following return to the order to show cause.

It is respectfully urged that upon its face the petition for a writ of habeas corpus is insufficient in law and therefore the order to show cause should be quashed for the following reasons:

(a) The petitioner does not allege facts to show that the Attorney General, or his authorized delegate, denied the petitioner an opportunity to present evidence on the subject of persecution or refused to consider the evidence presented by the petitioner.

(b) It is not alleged that the procedure followed in considering the petitioner's application to the Attorney General for a stay of deportation was irregular, unfair, or not in compliance with the statute and regulations applicable in such cases.

(c) A finding of fact by the Attorney General with respect to the likelihood of physical persecution is not required as a matter of law under the statute.

(d) The withholding of deportation in cases where the alien fears physical persecution rests wholly in the administrative judgment and opinion of the Attorney General, and such opinion is not subject to review by the court to the extent that they could substitute their judgment for that of the Attorney General.

I.

The petitioner is in the custody of the respondent by virtue of a lawful warrant of deportation issued April 8, 1953, after notice, and a hearing which resulted in an order of deportation on February 19, 1953. No appeal was taken by the petitioner from the order of deportation.

II.

The petitioner is thirty-three years of age, a native and citizen of Korea, who last entered the United States at Anchorage, Alaska, March 10, 1949. He was admitted for permanent residence as a nonquota immigrant to pursue the occupation of a professor. He had previously resided in the United States from October 24, 1947, to November, 1948, as a student.

III.

The warrant of deportation provides that he is subject to deportation under Section 241(a) of the Immigration and Nationality Act in that he was at the time of entry a member of a class of aliens excluded by the Act of October 16, 1918, as amended: an alien who was affiliated with the Communist Party of the United States.

ABOUT October 8, 1953, the petitioner applied for a stay of deportation based upon the claim that he would be subject to physical persecution if he were deported to Korea. On December 2, 1953, he was examined by Robert L. Needham, a qualified immigration officer, and was afforded an opportunity to present evidence in support of his claim. At that time he was represented by counsel. The record of this interview together with the exhibits introduced was forwarded to the Assistant Commissioner, Detention and Deportation Division, Washington, D. C., on December 14, 1953, for a decision upon the application for a stay of deportation. There was thereafter forwarded on January 5, 1954, for consideration of the Assistant Commissioner a letter received from the Korean Consul General at San Francisco, California, stating that the petitioner would not be subject to physical persecution but, on the contrary, would be welcomed as a prodigal son. On February 15, 1954, Assistant Commissioner W. F. Kelly directed the following communication to the respondent herein:

“After careful consideration of the material the alien has submitted and of his own testimony in support of his claim that he would be subject to physical persecution if deported to Korea, it is not my opinion that the alien would be subject to physical persecution if deported to that country. You should proceed, therefore, to execute the outstanding warrant of deportation * * *”

IV.

Pursuant to demand, the petitioner surrendered into the custody of the respondent at 9:00 a.m., March 26, 1954, for deportation. He was thereafter released on an immigration bond in the sum of \$1,000, pending determination of this action.

V.

There is attached and made a part of this Return, identified as Exhibit A, a transcript of the interview accorded the petitioner December 2, 1953, on his application for a stay of deportation, together with Exhibits No. 2 and No. 3. Exhibits Nos. 1, 4 and 5 have been requested by telegram from the petitioner's file at Washington, D. C., and will be made a part of the Return when they are received.

There are also attached to and made a part of this Return, and identified as Exhibits B, C, D and E, a copy of the warrant of deportation relating to the petitioner; a copy of a letter from the respondent dated December 14, 1953, forwarding the record (Exhibit A) to the Assistant Commissioner, Washington, D. C., for his opinion; a copy of a letter from the respondent dated January 5, 1954, forwarding to the Assistant Commissioner a copy of a letter received from the Consul General of Korea. The original letter from the Consul General is attached thereto. A copy of a letter from the Assistant Commissioner, addressed to the respondent, dated February 15, 1954, in which he states that it is not his opinion that the petitioner

would be subject to physical persecution if deported to Korea.

VI.

The respondent admits and denies the allegations in the petition as follows:

Allegations numbered I through VIII, inclusive, and X are admitted; allegation No. IX and that portion of allegation No. XI which avers that the decision of the Attorney General is arbitrary, is denied.

Wherefore, it is prayed that the petition for a writ of habeas corpus be dismissed and the rule to show cause quashed.

/s/ JOHN W. KEANE,
Attorney for the Respondent, John P. Boyd, District Director, Immigration & Naturalization Service, Seattle, Washington.

United States of America
Department of Justice
Immigration and Naturalization Service
Seattle, Washington

April 1, 1954.

CERTIFICATION

By Virtue of the authority vested in me by Title 8, Code of Federal Regulations, Section 2.1, a regulation issued by the Attorney General pursuant to Section 103 of the Immigration and Nationality Act,

I Hereby Certify that the annexed documents are originals, or copies thereof, from the records of the said Immigration and Naturalization Service, Department of Justice, relating to Johsel Namkung, File No. A-6 795007, of which the Attorney General is the legal custodian by virtue of Section 103 of the Immigration and Nationality Act.

In Witness Whereof I have hereunto set my hand and caused the seal of the Department of Justice, Immigration and Naturalization Service, to be affixed, on the day and year first above written.

[Seal] /s/ JOHN P. BOYD,
District Director, Immigration and Naturalization
Service, Seattle District.

EXHIBIT A

United States Department of Justice
Immigration and Naturalization Service
Seattle, Wash.

Respondent: Johsel Namkung

File: A6 795 007

Hearing

Date: December 2, 1953.

Place: Seattle, Washington.

Examining Officer: Robert L. Needham.

Stenographer: Mari Ohara.

Language Used: English.

Respondent's Counsel: Kenneth A. MacDonald.

Exhibit A—(Continued)

Examining Officer to Johsel Namkung:

Q. Please state your full name for the record.

A. Johsel Namkung.

Q. The purpose of this proceeding is to give you an opportunity to present any evidence bearing on your claim that, in the event you are deported to Korea, you will be subject to persecution there. During this proceeding you are advised that you have the right to have an attorney represent you. Do you wish an attorney to represent you at this proceeding? A. Yes.

Q. Is Attorney Kenneth A MacDonald, who is present, the attorney you have chosen to represent you? A. That's right.

Examining Officer to Counsel:

Q. Mr. MacDonald, will you identify yourself for the record?

A. My name is Kenneth A. MacDonald, Attorney of Law at Seattle, with offices at 602 New World Life Building, Seattle 4, Washington. I am admitted to practice before the Board of Immigration Appeals and the Immigration Service, and I have filed an appearance in this case and have served as Mr. Namkung's attorney during most of these proceedings.

Q. Are you ready to proceed, Mr. MacDonald?

A. Yes, I am, Mr. Needham.

Exhibit A—(Continued)

Examining Officer to Counsel and Respondent:

Q. During this proceeding, you are advised that you may submit any evidence or produce any witnesses bearing on the matter at issue. Do you understand that? A. Yes. (By both.) [1*]

Examining Officer to Respondent:

Q. Mr. Namkung, will you stand and raise your right hand to be sworn. (Respondent complies.) Do you solemnly swear that the statements you are about to make will be the truth, the whole truth, and nothing but the truth, so help you God?

A. Yes, I do.

Examining Officer to Counsel:

Counsel may proceed.

Counsel to Respondent:

Q. Mr. Namkung, will you state your name, please? A. My name is Johsel Namkung.

Q. Your present address?

A. 2017 - 18th Avenue, South.

Q. Are you married? A. Yes, I am.

Q. Your wife's name?

A. Helen Mineko Namkung.

Q. And her citizenship now?

A. I really don't know. We came to this country as Korean citizens, but now the passport has been expired and hasn't been extended to valid date.

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

Exhibit A—(Continued)

Q. Do you have any children?

A. Yes, I do.

Q. Will you state their names and ages, please?

A. Irene, age 10; Paulette, age 7.

Q. How much of your life, stated roughly, Mr. Namkung, have you lived in Korea?

A. I lived there since my birth to the age of 16, and I returned to Korea several times after that until 1945 when I repatriated to Korea and stayed until 1947.

Q. Now, Mr. Namkung, do you have any brothers or sisters?

A. Yes, I do. I have five brothers and two sisters.

Q. Would you, merely for the record, state their names and addresses as you presently know them?

A. Joseph, 471 Kishimoto Building, Marunouchi, Tokyo;

Daniel, 60 Chongpadong Second Street, Seoul, Korea;

David, address same as Joseph's;

Moses, residing in Seattle; [2]

Timothy, same as Joseph's;

Won Suk, oldest sister, whereabouts unknown;

Johanna, residing with Daniel.

Q. Now, Mr. Namkung, have you recently received a letter from your brother Joseph H. Namkung, sent from 417 Kishimoto Building, Marunouchi, Toyko, Japan?

A. Yes, I have.

Q. Do you recall the date of that letter?

Exhibit A—(Continued)

A. I think it was around the end of October.

Q. Of what year? A. 1953.

Q. Mr. Namkung, I am handing you two pieces of paper stapled together and stapled to an envelope addressed to Mr. Johsel Namkung, 2017 - 18th Avenue, South, Seattle, Washington, U.S.A., bearing two Japanese stamps. I ask you if you will identify what that is?

A. This is the letter I received from my brother Joseph.

Q. Mr. Namkung, have you read that letter?

A. Yes, I have.

Q. Now, handing you, Mr. Namkung, a 2-page, unstapled at the present time, sheet in English, appearing to be a letter from Joseph H. Namkung of 417 Kishimoto Building, Marunouchi, Tokyo, Japan, and addressed to Johsel Namkung, 2107-18th Avenue, South, Seattle, Washington, U.S.A., and dated October 20, 1953, I will ask if you will state, please, what the first and second pages are.

A. The first page consists of the translation of the letter I received from Joseph.

Q. And the second page?

A. And the second page is a certificate as to the translation is accurate.

Q. You made the translation?

A. Yes, I did.

Counsel to Examining Officer:

Q. Mr. Needham, I should like to offer in evidence both the first exhibit, being the letter from Joseph H. Namkung, and——

Exhibit A—(Continued)

Counsel to Respondent:

Q. Mr. Namkung, is that written in Japanese or Korean? A. That is in Korean.

Counsel to Examining Officer: [3]

I would like to offer in evidence, also, the translation of that letter as made today by Mr. Namkung and certified by him under oath to be correct. Now, that would be the second exhibit, being the translation. If you wish, Mr. Namkung could read that into the record, but the letter speaks for itself.

By Examining Officer:

The letter from Joseph H. Namkung, described by counsel, together with the English translation of the letter and the certification by respondent of his correct translation of the letter, will be received into evidence and marked "Exhibit 1."

Counsel to Respondent:

Q. Now, Mr. Namkung, referring to your living in Korea before coming to the United States, at that time did you know of a public official known as Syngman Rhee? A. Yes.

Q. What was his position at that time, in what then constituted Korea?

A. He was the President of the Republic of Korea.

Q. And that republic included what is now North and what is now South Korea?

Exhibit A—(Continued)

A. No, it was only governing Southern Korea, South portion of Korea.

Q. Now, Mr. Namkung, do you recall, before leaving Korea, of your ever having criticized Syngman Rhee in Korea? A. Yes, I have.

Q. Did you criticize him in public?

A. Yes, I think I have criticized him in public a few times.

Q. Do you remember attending any meetings in Korea at which time he was criticized?

A. Well, I have to make it clear that in 1947 when I first came to this country Syngman Rhee wasn't President of Korea, and he was President when I went back to Korea in 1948, and during my second visit, I didn't have chance to appear before the public, and if I had criticized him in public, I might have been persecuted then, so my criticism of Syngman Rhee in public was back in 1947.

Q. Now, Mr. Namkung, when did you come to the United States the first time?

A. It was October, 1947.

Q. And you have already testified in a portion of this proceeding, have you not, of meeting with some people of Korean nationality here in the city of Seattle after you came to this country?

A. Yes, I have. [4]

Q. And you have testified, have you not, that this was a University group? A. Yes.

Q. Of whom Harold Sunoo was one?

A. Yes.

Exhibit A—(Continued)

Q. And you knew the other people in that group?

A. You mean at the time I first came?

Q. Yes.

A. Harold Sunoo was the only person.

Q. Do you recall a subsequent time when you went back to Korea, and was the purpose of that to get your children to bring them back? A. Yes.

Q. You and your wife were, at that time, in the United States? A. Yes.

Q. And you did go to Korea? A. Yes.

Q. Do you remember, at that time, being asked to take a communication to Korea?

A. Yes, I was.

Q. And you did take it? A. Yes, I did.

Q. You have no knowledge of what was in that communication?

A. I had a knowledge of the content of the letter.

Q. And you took that letter with you?

A. Yes.

Q. Do you remember what you did with that letter?

A. I handed it to a person that I previously known whom I believe had some contact with North Korean Government.

Q. And you handed it to that person where?

A. In Seoul.

Q. When you handed it to him, was it before the North Korean aggression of June 25, 1950?

A. Yes.

Q. It was? A. Yes. [5]

Exhibit A—(Continued)

Q. Have you subsequently seen this communication or a copy of it?

A. No, I only saw the translation of the communication in ditto copy.

Q. And that was submitted to you by the investigators for the Immigration Service? A. Yes.

Q. To your best recollection, this communication certainly was not a friendly communication to Syngman Rhee? A. No, it was not.

Q. Now, Mr. Namkung, do you presently have a passport? A. No, I don't.

Q. Do you know where your passport is?

A. I returned it to Mr. Gates at the Deportation Section, and I assume it is now returned to South Korean Government.

Q. Do you assume that because of that letter from your brother that he saw the passport?

A. That's right.

Q. That it is with the South Korean Government? A. Yes.

Q. Now, Mr. Namkung, do you know what a writ of habeas corpus is?

A. Not precisely, but I understand what it is.

Q. Does such a writ exist in either North or South Korea, to your knowledge?

A. Since I haven't studied the constitution and federal laws closely, I cannot tell of the existence of writ of habeas corpus. However, I am positive that such practice is not existing in South Korea and North Korea.

Q. Now, Mr. Namkung, in previous proceedings

Exhibit A—(Continued)

in this deportation action, have you submitted a statement concerning your opposition to the, what you have called the “terroristic” methods of both the Communist Party and Mr. Syngman Rhee?

A. That’s right.

Q. And in your first statement so submitted, dated 15th day of April, 1953, do you also recall setting forth news reports or magazine reports concerning the methods by which Mr. Rhee became President of the South Korean Republic, the way he ran the country, the police methods of the South Koreans?

A. Yes, that’s correct.

Q. Showing you what is presently unstapled but six pages of typewritten material, I ask you if it is a copy of material which you have already submitted to the Immigration Service?

A. Yes, that is.

Q. And that was signed by you?

A. Yes. [6]

Q. And I ask you if you wish to resubmit this as a part of this hearing, mindful of the fact that the Immigration officers already have it, but would you like to have it included as a part of this hearing?

A. Yes.

Q. Mr. Namkung, I wonder if I could suggest that you sign this copy under today’s date?

A. Yes, I will.

(Respondent signs copy.)

Counsel to Examining Officer:

Q. I would like to submit this copy as an exhibit to this transcript.

Exhibit A—(Continued)

A. Signed statement of Johsel Namkung, consisting of six pages, dated April 15, 1953, will be admitted as "Exhibit No. 2."

Q. Mr. Needham, I find and would like to offer for the record a signed verification dated 23rd day of April, which has been signed by me, that should be attached to the exhibit which has just been received.

A. This notarized certification, Counsel, does that refer to Exhibit 2?

A. Yes, it does, Mr. Needham.

Examining Officer to Respondent:

Q. Mr. Namkung, is it correct that you made your certification under oath, and it was sworn to as indicated?

A. Yes.

Examining Officer to Counsel:

Q. Will the Counsel sign this certification?

A. Yes, I will.

(Counsel signs certification.)

Examining Officer:

Such signed certification will be attached to Exhibit 2 as part of such exhibit.

Counsel to Respondent:

Q. Mr. Namkung, you wish to reaffirm everything which has been said in Exhibit 2, is that right?

A. Yes.

Exhibit A—(Continued)

Q. Now, Mr. Namkung, I call your attention to an affidavit filed in this proceeding, the original of which was signed by you on the 27th day of October, 1953. I hand it to you and ask if this was prepared by you and if it contains more recent quotations than Exhibit 2 concerning Mr. Rhee's attitude toward the United Nations, toward the representatives of the United States, and particularly toward Mr. Rhee's political opponent named Chough Pyung Ok, who resisted [7] the freeing of the anti-Communist war prisoners by Mr. Rhee. Did you prepare this statement? A. Yes, I did.

Q. I ask, Mr. Namkung, if you would sign this copy? A. Yes, I will.

(Respondent signs copy.)

Q. And being mindful that this affidavit has been submitted to the Immigration Service, I ask you if you wish the affidavit and the material and the news and magazine quotations included therein to be submitted as an exhibit here and attached to this transcript? A. Yes, I do.

Counsel to Examining Officer:

Q. Mr. Needham, I would like to offer this affidavit dated October 27, 1953.

A. Signed carbon copy of such affidavit described will be admitted for record and marked "Exhibit 3."

Exhibit A—(Continued)

Counsel to Respondent:

Q. Mr. Namkung, showing you a news article from the Seattle Daily Times, sunset final edition of Wednesday, November 4, 1953, concerning Mr. Rhee's statement of on or about that day to fight to unify Korea, I ask if you would like it introduced as exhibit in this case? A. Yes, I do.

Q. Do you have any opinion, Mr. Namkung, as to Mr. Rhee's attitude of unification by force, if necessary; what effect that would have on you personally if you were, in the near future, to be sent to South Korea?

A. That clearly shows that the opinion of Syngman Rhee is to conquer North Korea presently governed by the Communists. That manifests hostilities toward Communism, and I, such as a carrier of a message which was hostile to Syngman Rhee to be delivered to North Korean Government officials, undoubtedly, would be persecuted if I were to be deported by the United States Government.

Q. Now, have you ever been a member of the Communist Party, Mr. Namkung?

A. No, I have never been.

Q. And you are not a member now?

A. No, I am not.

Q. And you are stating that under oath?

A. Yes.

Q. And you have stated under oath frequently?

A. That's right. [8]

Q. However, is it not true, Mr. Namkung, that

Exhibit A—(Continued)

an order of deportation has been issued because of your affiliation with an organization which was affiliated with the Communist Party of the United States? A. Yes.

Q. Is it your belief that this fact is known to the South Korean Government?

A. Yes, I think so.

Q. Is that belief based upon the letter of October 20, 1953, received from your brother Joseph Namkung?

A. That is one reason to believe. The other, it is my pure assumption but the way it wouldn't have been possible that the United States Government take possession of that letter I took personally to South Korea to be delivered to North Korea in 1948 without the cooperation of South Korean Government. Therefore, I believe South Korean Government knows about this implication.

Counsel to Examining Officer:

Q. Mr. Needham, I should like to offer as Mr. Namkung's exhibit the newspaper story in the Seattle Times, sunset final edition, dated November 4, 1953, concerning Mr. Rhee's desire to unify the Korean country by force if necessary.

A. Such newspaper article will be accepted and marked "Exhibit 4."

Counsel to Respondent:

Q. Mr. Namkung, can you state, of your own general knowledge, the duration of the present armistice in Korea? A. Yes, I do.

Exhibit A—(Continued)

Q. How long is that armistice to last?

A. I think it was three months or 90 days.

Q. From the cessation of hostilities?

A. That's right.

Q. Do you know, from your own knowledge, whether there was to have been a political conference held to determine the Korean problems within that period?

A. Yes, I do.

Q. Has that political conference been held?

A. No, not yet.

Q. Do you have any knowledge of when the 90 days expires?

A. I don't remember the exact date, but it is sometime middle of January, 1954.

Q. And is it not true that that's the date that Mr. Rhee has stated he will take military action if Korea is not unified?

A. That's correct. [9]

Q. Now, Mr. Namkung, handing you a news article entitled "ROKS May Court-Martial Ex-P.O.W.'s" apparently from the Seattle Times, Thursday, November 5, 1953, I ask you if you took that from the Seattle Times?

A. Yes, I did.

Q. And does this concern the attitude of the South Korean Government towards those South Korean prisoners who gave in to the "brain-washing" of the North Korean Communists?

A. Yes.

Q. And you would like to have this submitted in evidence?

A. Yes.

Counsel to Examining Officer:

Q. I offer it, Mr. Needham.

Exhibit A—(Continued)

A. Such article, Associated Press dateline of November 5, Pusan, Korea, will be accepted and marked "Exhibit 5."

Counsel to Respondent:

Q. Mr. Namkung, have you ever had occasion to observe personally the disregard with which human life is held in the Orient?

A. Yes, I have observed them so many times, although I cannot specify the date and place.

Q. From such observation, do you conclude that human life is as important in the Orient as it is in the United States?

A. No. Human life in Korea, not only Korea but throughout the Orient, is considered as much less important than to the Western countries.

Q. Mr. Namkung, as you understand them, are you devoted to the aims of the United Nations' forces in Korea today?

A. Yes, I think I do.

Q. Are you and have you supported the Government of the United States to the best of your ability in fulfilling those United Nations' aims?

A. Yes, I think.

Q. And do you plan to continue to do so?

A. Yes, definitely so.

Q. Have you cooperated to the fullest extent possible with the Immigration Service?

A. Yes, I have been trying to.

Q. And has your wife, to your knowledge?

A. Yes. [10]

Exhibit A—(Continued)

Q. Mr. Namkung, do you have any fear for the safety of your wife and children in the event that all of you are deported to Korea?

A. There's no doubt, in the event I, together with my family, were deported to South Korea, we would all be executed in due course.

Q. Now, would you, in your own words, state to Mr. Needham your reasons why you think such execution would come about of you and your entire family?

A. Could I have a recess before I make this statement?

Examining Officer to Respondent:

Yes, if you wish to confer with your attorney, you may have a 10-minute recess.

Counsel:

Before the recess, I would like to ask a few questions if I may.

Counsel to Respondent:

Q. Mr. Namkung, what language do you speak?

A. I speak the Korean, Japanese languages and two dialects of Chinese language, and English, and reading knowledge of the German and French languages.

Q. And in what languages can you write?

A. I can write in Korean, Japanese, English and Chinese.

Q. And if called upon, Mr. Namkung, would you

Exhibit A—(Continued)

submit all of this knowledge to the Government of the United States?

A. Yes, I always been willing to offer my ability.

Q. To the Government of the United States in whatever they might ask you to do?

A. That's right.

Q. And would you offer to them any knowledge which you might have of conditions, or geography or history, in the Far East?

A. Yes, I have been to a certain governmental agencies, and I am willing to continue to do so, any United States Government agencies.

Q. And you would do this in an effort to maintain our democracy in its fight against totalitarianism?

A. Yes.

(Recess.)

(Hearing resumed.)

Respondent Presents Dr. Frank G. Williston.

Examining Officer to Dr. Frank G. Williston: [11]

Q. Will you please stand and raise your right hand. Do you solemnly swear that the testimony you are about to make will be the truth, the whole truth, and nothing but the truth, so help you God?

A. I do.

Q. Will you please state your full, correct name for the record?

A. Frank Goodman Williston.

Q. Are you a native-born citizen of the United States?

A. Yes, Seattle.

Exhibit A—(Continued)

Q. What is your occupation?

A. I am professor at the University of Washington.

Q. And what is your specialty?

A. My special field is the American-Far East Policy, International Relations in the Far East, in general.

Examining Officer to Counsel:

Counsel may proceed to question the witness.

Counsel to Witness:

Q. Dr. Williston, have you recently been in the Far East?

A. I returned the latter part of September of this year.

Q. 1953? A. Yes.

Q. How long were you in the Far East at this time?

A. Little over two months. I left just at the end of the spring quarter and returned just before the fall quarter.

Q. What countries did you visit on this recent 1953 trip? A. Japan and Korea.

Q. And do you teach on the subject of Korea?

A. I teach a general survey course in Korean History and one in Korean Civilization.

Q. Do you also do any work on radio or television concerning Korea?

A. Yes. I have had a television program which ended last week in which I discussed my experi-

Exhibit A—(Continued)

ences in Korea, and I have a weekly radio program which is still going on in which I deal with the current developments in the Far East area, and of course that includes Korea.

Q. When were you last in Korea before the summer of 1953? A. 1936. [12]

Q. However, you kept in close touch with Korea through World War II? A. Yes.

Q. And then you kept in close touch with Korea subsequent to World War II and before the aggression of June, 1950? A. I've tried to.

Q. Dr. Williston, the record here in this proceeding will show that Mr. Johsel Namkung is a Korean who came to the United States and subsequently left the United States from the University of Washington, that at the time he left the United States he was meeting with a small group of Korean nationals alleged later to have been affiliated with the Communist Party of the United States. The record here has shown that Mr. Namkung denied and knew nothing of this affiliation. However, the record has shown that Mr. Namkung, upon returning to Korea to get his two children in the year 1948, did in fact take a communication with him from this Korean national group, that this communication was turned over to a friend of Mr. Namkung or at least a man he knew in Seoul, with the anticipation that the communication would be turned over to a responsible official of the North Korean Government. The record has shown that this communication was a com-

Exhibit A—(Continued)

munication directed, at least, against the policies of Mr. Syngman Rhee. The record will further show that approximately one year ago that Mr. Namkung was ordered deported from the United States on the grounds that he had belonged to an organization which was not the Communist Party of the United States but which was affiliated with the Communist Party of the United States. The record will show that Mr. Namkung had denied membership in this organization, nevertheless an order of deportation on that ground was made and no appeal was taken. Now this hearing, Dr. Williston, is concerned only with the fact of whether Mr. Namkung, if he were to be deported to Korea today, whether he or his wife and two children would suffer persecution if they were to now go to Korea. I wonder if you have an opinion on that issue?

A. I would be inclined to feel that this would take place. Now, how severe it would be. I don't know.

Q. You do have an opinion, Dr. Williston, and would you state the opinion and your reasons for holding the opinion in your own language?

A. I know that Dr. Rhee as of this summer, the tempo has been stepped up since my return, has been seeking to eliminate from both the civilian and military set-up those elements that he did not trust. The New York Times, Christian Science Monitor, since my return, both reported that purges and liquidations have been rather extensive. Some cases resulted in dismissal from office; other cases, arrests, and

Exhibit A—(Continued)

actual execution in some cases. Now, very few names have been given by the reports as coming from these journals, but some of these were merely suspects, people who allegedly have been sympathetic to the Communist cause. Margaret Higgins, the famous woman correspondent [13] for the New York Herald Tribune, a very responsible journal, stated, although very sympathetic toward Syngman Rhee, that to her knowledge men and women were shot for merely allegedly belonging to Communist groups. I know that, when Syngman Rhee's government came in with General MacArthur's forces in the Inchon landing, that they rounded up and after very cursory trials executed a large number, in fact executed so many that the foreign correspondents, the Americans, protested to such an extent that General MacArthur finally intervened and stopped it. I know, too, that when these same troops of South Korea preceded General MacArthur across the 38th Parallel toward the Yalu in search of the Communists, they gave them quasi trials and after little more than charges were made, again from the New York Times, men and women were rounded up and shot, and this became so flagrant and widespread that General MacArthur again had to intervene and order these troops sent back below the 38th Parallel. I, in talking with both the military personnel and correspondents in September, they certainly in general held the opinion that Dr. Rhee feels the situation is so crucial that he is again continuing this policy of eliminating all

Exhibit A—(Continued)

those whom he feels he cannot trust, and there is no habeas corpus, no formal judicial hearing in many of these cases. As far as I am able to find, I can't prove these cases, I don't know them personally, I would, on the basis of such testimony as evidenced in the New York Times and Christian Science Monitor that the only charge made against some of these men was earlier affiliations with the Communist movement and under those circumstances, I would feel quite probable, I can't swear to it, of course, but quite probable, that he would suffer persecution and perhaps worse.

Q. Dr. Williston, do you have any opinion or knowledge as to what is happening to some of Dr. Rhee's political opponents during the past year?

A. I recall that when he swore to change the structure of the government to provide for the election of President by direct vote instead of by assembly, the troops or youth groups surged to the assembly and threatened to conduct purges; Syngman Rhee, very much like Cromwell did in his days, eliminated those hostile to him. Some of these men were under arrest or are known to have been beaten, and some went into hiding, and some disappeared, whether for safety's sake or liquidated no one seems to know. I do know that a number of men who opposed openly have been manhandled and worse. This is common knowledge.

Q. Do you have any opinion, Dr. Williston, as to whether Korea in the next six months to a year,

Exhibit A—(Continued)

whether the tensions will be eliminated and life and property perhaps made more secure?

A. I should say that, until a settlement is reached by formal peace treaty or agreement, to continue operation on the present uneasy truce, the tensions are bound to increase rather than diminish. [14] Dr. Rhee has repeatedly declared that he will not be bound by any settlement. He will order his troops to move, and I talked to military officers on that point in September, and they expect obviously that he will make the effort to cancel all agreements we try to reach in terms of a settlement if it does not provide for the full and complete unification of Korea, and this, of course, does not only increase the tensions but the possibility of outbreak of war again. Furthermore, we know that in the last few weeks two agreements have been reached by the North Korean and Communist Chinese Government by which both of these Communist powers have not only sworn to support North Korea but offered substantial economic aid for the integration of the economic resources, particularly industries of North Korea, Manchuria, in China and Eastern Siberia. This means that neither Communist China nor Russia will willingly permit any honest and genuine unification of Korea, and since Dr. Rhee has sworn to achieve that, I don't see how one can do other than anticipate either an enforced retention on the part of the United Nations of Dr. Rhee by putting him under duress or running the risk of another war. In any event, there will be a tremendous tension.

Exhibit A—(Continued)

Q. Isn't there a critical date when this issue may or may not be resolved coming in the near future?

A. The immediate issue will be settled presumably by January; that is, the question of the prisoners who refused to return. The 90 days will expire, and Syngman Rhee insists that when that expiration date has been reached, he is absolved from all responsibility and free to act. He said just a few days ago that he hopes that his present allies will sympathize with him and support him. This they have refused to do, but it does indicate the gravity of the situation we are going toward now.

Counsel to Examining Officer:

Q. Do you have any questions to ask of Dr. Williston, Mr. Needham? A. Yes, I have.

Examining Officer to Witness:

Q. Dr., you referred to the landings made under General MacArthur and the executions that took place at the instigation of the South Korean Army officials, I presume?

A. Yes, civilian and army, South Korean civilian government.

Q. Were these executions by military law or civil law?

A. Apparently civil law. The reporters indicate that it was difficult to determine what was transpiring. They were being shot, and there were no formal trials. They were allegedly being accused of having collaborated during the period of Communist oc-

Exhibit A—(Continued)

cupation. This is the charge against them, and they were being shot without benefit of any [15] formal trial.

Q. Your knowledge of actual conditions in Korea since your return comes from articles in newspapers in this country?

A. Yes, and, for example, CBS correspondent who was there in Seoul at the time I was, who has since been transferred to Tokyo, and by broadcast and newspaper accounts, yes, that is the basis.

Q. You have indicated Syngman Rhee's, you might say, "violent" opposition to Communists which is understandable, but I presume you have considered his action in releasing the North Korean Communist prisoners, who apparently were former Communists, and has reportedly accepted many of them in his own armed forces.

A. Those were supposedly South Korean prisoners who had been taken contrary to the Geneva Convention. This has been very definitely proved; not just hearsay. When the North Korean Army came down and captured the, as they did in the early days of 1950, large blocs of South Korean prisoners, they forced a substantial number of these into the North Korean Army and, I think it has been pretty well established, in contravention of laws of warfare. When these were recaptured, these were the ones, as I understand Dr. Rhee's position, he was holding, and these are the ones he was insisting upon releasing on the grounds that they were forced into the army and not in any sense Communists.

Exhibit A—(Continued)

Q. However, weren't many of these prisoners also persons from North Korea?

A. Some of them.

Q. Also, quite a number of them were Chinese, isn't that correct?

A. No, not of that contingent, not of that released in June. Of course, Dr. Rhee has taken the position, and I can't prove it, that a substantial number of North Korean prisoners could not properly be labeled Communists but forced in. We now have a boy on the campus who was in Seoul at the age of 13. As they were forcing the boys into military service in North Korea, he hid in a hole in a back yard, and I have been inside the Communist territory in China in UNRRA work, and I know something of the pressures that were applied. They were inducted as fast as they could, but there were many there under compulsion. You may recall, during the days of fighting on the Yalu River front, large blocs of prisoners voluntarily surrendered even though they were winning. They sought to escape the Communist control.

Q. Although Syngman Rhee apparently is in control of South Korea, he does have political opposition, isn't that correct?

A. That's right.

Q. As I understand, the leader of the strongest political party is Chough Pyung Ok, is that correct?

A. Yes, he is one of the outstanding ones. Rhee sought to change the constitution and provide for the election by popular vote rather than by assembly.

Exhibit A—(Continued)

The assembly was against it, and it indicates that he is one of the political elements hostile to him. [16]

Q. And is it your understanding that this existing campaign as portrayed in the newspapers, this campaign to rid his government of subversives, involves actual subversives and not people who might have been formerly attached to the Communist Party or affiliated?

A. Well, it's difficult to say. The newspaper accounts singled out the ones that are most conspicuous. One of them, who was a leading opponent in the last election, originally affiliated with the Communists, was subjected to considerable physical pressure in the campaign. Some of these, undoubtedly, are allegedly subversives, but the story one gets in terms of this drive throughout this summer has been he is trying to make sure that no one is in any political or military position to challenge his authority when the time comes when he chooses to defy the United Nations' position. I talked with American military officers who worked with the Korean troops; they all agreed, with whom I talked, that he was in the process of seeing to it that the men who conceivably might have resisted him would be in no position to resist him. This does not in any sense raise the question that he is wise or unwise. I think he is quite sincere and very much determined to achieve unification of Korea and there would be no peace in the Orient until that is achieved.

Q. Do you think, then, that the respondent, Mr. Namkung, if he were deported to Korea, he might

Exhibit A—(Continued)

be charged with conspiring against the interests of South Korea?

A. I think it's very probable. I think a very serious situation would develop.

Q. From your knowledge of South Korean judicial process, would you say that he would get a fair trial there?

A. There is no such thing at the moment, no writ of habeas corpus, no formal proceedings. Particularly, under these strained conditions I should say that the prospect of a fair trial in the terms of Western concept is extremely remote.

Q. Mr. Namkung has made the statement that also his wife and family would be in danger if he were sent back. Do you believe that his wife and children, never having any connection with the Communist Party, would also be arrested and charged with some offense?

A. I do know this, that historically this is true, all the way into contemporary times, that the family of a prisoner has been punished with the prisoner and that as late as the 19th Century before Japan took over, as part of the criminal procedure, the family of the condemned man was condemned with him. No formal charge has been made against Syngman Rhee that this same procedure is being applied, striking the entire family rather than against the man himself, on that I have no specific evidence, but I know Western reporters are making such a charge. The thing, of course, is that it aroused the Western correspondents to such an extent that finally they went to General MacArthur, that this had to stop, the exe-

Exhibit A—(Continued)

cution of women even with babies for being identified with their husbands in this charge of collaboration. [17]

Examining Officer:

I have no further questions.

Counsel to Witness:

Q. Dr. Williston, I am handing you a copy of an exhibit which has just been introduced, Exhibit 1, which is a letter from Joseph H. Namkung to Johsel Namkung, and the letter is self-explanatory. I wonder if you would read it, please.

(Witness reads Exhibit 1.)

A. I should certainly say that the family is the target of the charge, and it is obvious that they are bewildered and hurt by the charge against Joe.

Q. I call your attention to the third from the last paragraph where Joseph Namkung states, "Unless you are repentant of your past mistake and make a public announcement to the society of your pledge not to retake the same path you have been in, your future will be nothing but dreadful one. And not only you but all the brothers in the family, though not in your way of thinking, will fall into the same fate."

A. I think that bears out, certainly. This practice has been a historic part of the criminal proceeding in Korea. It's terrible, but true.

Q. Is it not true that Syngman Rhee did not re-

Exhibit A—(Continued)

lease a good many North Koreans? A. Yes.

Q. Is it not true that he released a few, if any, Chinese prisoners?

A. I wasn't aware that any Chinese were released. I was not aware of that.

By Examining Officer:

Witness is excused.

(Witness excused.)

Counsel to Respondent:

Q. Mr. Namkung, I wonder if you would care to make a statement to Mr. Needham of why you feel that neither you nor your family at this time should be deported to South Korea?

By Examining Officer:

Q. Will the respondent confine his statement to matters that have not been included in the [18] record.

By Respondent:

Dr. Rhee's attitude toward Communism is needless to say at this moment because it is too well known to the people of the world. He seems almost to be born to crush Communism. I don't have any objection to his desire to crush Communism. However, his brutal tactics of suppressing Communists and their sympathizers and suspects, as well as his political opponents, are also very well known facts

Exhibit A—(Continued)

to the people. The leaders of Korean national police have been Rhee's followers. They comprise of former police officers under Japanese domination. They were enemies of Korean people. When the Second World War was terminated, North Korea persecuted or detained or deported all the police officers who collaborated with the Japanese Government. However, in South Korea, the situation was opposite. Syngman Rhee not only encouraged them to stay in their former position but also gave them the most responsible positions, thus they naturally became followers of Syngman Rhee. Without Syngman Rhee's protection, they would be persecuted by the people, and they are always willing to co-operate with Syngman Rhee's orders. South Korea has been constantly undergoing purges of military personnel as well as civilian officials, without mentioning general public. Rhee detains or executes people who are Communists, pro-Communistic, neutrals, and those who do not agree with his ideas. Anyone who is not desirable to him is alleged to be a Communist, and that means he is subject to persecution. I believe I am known as a person having been affiliated with Communist Party and worked for the cause of Communist Party. If I were to be deported, together with my family to South Korea, I am a person condemned by the United States Government, without protection from any government, and is solely subject to the mercy of South Korean Government. I strongly believe there is very little chance that I could survive. What I really fear for is not the fate

Exhibit A—(Continued)

of myself only, but the fate of my direct family and also that of my folks in Korea and in Japan, too.

Counsel to Respondent:

Q. Mr. Namkung, would you submit yourself to whatever and future screening that might be suggested by the United States Government concerning your loyalty?

A. I am willing and always available for the screening.

Q. And you also have been and are willing to assist the United States Government in any way you can?

A. Yes.

Counsel to Examining Officer:

That's all I have, Mr. Needham.

Examining Officer to Respondent:

Q. Do you consider that your immediate family or relations now in Korea would also suffer persecution if you were deported there?

A. It may or may not, and probably some of them, if not all, because one of my brothers had been arrested by the South Korean Government [19] on the alleged charges of having engaged in espionage activities which was proved to be a forgery.

Q. Was he tried and the charges dismissed?

A. I don't hear from him directly, and as far as I know, he has been released on bond. I don't know whether his case has been cleared or not.

Exhibit A—(Continued)

Q. And the charge, you say, is espionage?

A. Yes.

Q. You made the statement that you would support the United States Government to achieve the United Nations' aims in Korea. Just, in what manner have you supported the Government to achieve such aims? Or perhaps you didn't mean exactly that? Isn't it a fact that what you meant by that is that you would give information to certain branches of the Government here on various items of information of interest to the Government, isn't that actually what you meant?

A. Yes, that's correct, and I was trying to think of the occasions that I have supplied information or aided as to achieve the United Nations' objectives in Korea. I cannot recall any specific date or on what specific matters.

Q. To which branch of the Government have you submitted such information?

A. I assume it was Central Intelligence Agency and also to Federal Bureau of Investigation.

Q. Agents of these two agencies have approached you, then, and interviewed you on various matters?

A. Yes, that's correct.

Q. The South Korean Republic has a judicial system, I presume, is that correct? A. Yes.

Q. Is it composed of various courts and judges presiding at these courts? A. Yes.

Q. If, for example, you commit a robbery in

Exhibit A—(Continued)

Korea, are you arrested and brought before one of these courts?

A. Well, all I know is the police will arrest him and put him in the cell and start torturing him to get the confession.

Q. If he confesses, is he brought before a court?

A. Yes.

Q. Is he permitted a jury trial?

A. There is no jury system in Korea.

Q. The judge himself will decide whether the prisoner is guilty or innocent?

A. That's right, yes. [20]

Q. Does the judge assess the fine for the victim?

A. Yes.

Examining Officer to Counsel:

I don't have any further questions; does the Counsel?

By Counsel:

I wish to state for the record my appreciation for this hearing and the appreciation of Mr. Namkung for being able to come here and present, by live testimony, by affidavit, by newspaper report, and by his own statements, his reasons for his belief that he and his family will suffer persecution if he is deported to South Korea.

Examining Officer to Respondent:

Q. Does the respondent have any further statement to make or further evidence to offer?

Exhibit A—(Continued)

A. No, not at the moment, but if I happen to get further information, I would bring it over to you, Mr. Needham.

By Examining Officer:

If further information is submitted before the completed hearing is forwarded to the Central Office of this Service, it will be included as part of the papers and will be considered in the final decision.

Transcript of shorthand notes taken by me on December 2, 1953.

/s/ MARI OHARA. [21]

Exhibit A—(Continued)

United States Department of Justice
Immigration and Naturalization Service
Seattle District

December 14, 1953.

File: A6 795 007

In re: Johsel Namkung

Proceedings Under 8 CFR 243.3(b)

In Behalf of Respondent: Kenneth A. MacDonald,
Attorney at Law,
602 New World Life
Building,
Seattle 4, Washington.

Application:

Stay of deportation on the grounds of claim, persecution.

Discussion:

The record relates to a 33-year-old male, a native and citizen of Korea, who last entered the United States at Seattle, Washington, via Anchorage, Alaska, March 10, 1949, and was admitted pursuant to Section 4(d) of the Immigration Act of 1924. This respondent first entered the United States October 27, 1947, at Seattle, Washington, under Section 4(e) of the Immigration Act of 1924. Subsequent to the respondent's last entry, he was arrested on July 25, 1952, on the charge that he was a

Exhibit A—(Continued)

member of the Communist Party prior to, and the time of, and after entry. At the termination of the warrant hearing, September 4, 1952, the hearing officer found the respondent subject to deportation on the lodged charge that he was affiliated with the Communist Party at the time of entry. The hearing officer ordered his deportation from the United States. A warrant of deportation dated April 8, 1953, is now outstanding.

In pursuance to respondent's application now under consideration, he appeared for a hearing December 2, 1953, represented by counsel. Respondent testified that he believe he would be persecuted if he were deported to Korea because he had, in the past, on various occasions, indicated his strong opposition to Syngman Rhee, the South Korean president. Respondent submitted newspaper clippings, a translation of a letter he purports to have received from a brother in Japan, and a witness to support his contention of persecution. The newspaper reports he quotes are concerned with actions the South Korean government has allegedly taken in connection with prisoners of war under control of the Allies. The translation of the letter, allegedly received from respondent's brother (Exhibit "A") indicates that the respondent's family in Korea and Japan apparently fear loss of social status, unless respondent renounced his "red" philosophy.

The Witness, Dr. Frank Williston, testified he was a professor in the Far Eastern Division of the

Exhibit A—(Continued)

University of Washington and that he was familiar with Far Eastern conditions. He stated he had returned from a 2-month trip to Korea in 1953. Dr. Williston testified that his knowledge of present-day conditions in Korea relating to politics was based on current newspaper reports and especially on reports by the New York Times and the Christian Science Monitor. He stated that, in his opinion, if the respondent were deported to Korea, he might suffer persecution, the extent of which he did not know. Dr. Williston pointed out that, in the Inchon landing under General MacArthur, the South Korean military and civil authorities had executed many captured North Korean soldiers on the grounds of their affiliation with the Communists. When questioned in regard to the basis for his opinion of possible persecution to the respondent if he were deported, Dr. Williston admitted that his opinion was based upon current newspaper reports emanating from Korea. Dr. Williston was further questioned in regard to his opinion of Syngman Rhee's act in releasing thousands of North Korean Communist prisoners and the report that he had inducted many of such prisoners into his own army. Dr. Williston stated that he believed many of these released prisoners had been forced into the North Korean armies and never had been Communists.

From the testimony of respondent and the evidence presented, it does not appear that he has

Exhibit A—(Continued)

produced any evidence that would form the basis of a conclusion that he would be persecuted if deported to Korea. He has testified that he has a brother in Korea who was arrested for alleged espionage activity by the South Korean government. He testified that the brother was arrested and released on bond, and he does not know whether his case has been completed or not. He testified that the judicial system in Korea consisted of courts, a judge in each court, but no jury system. However, it appears that if his brother, charged with espionage, can be arrested and then released on bond, no actual summary execution is taking place in Korea of Communists or alleged Communists as respondent maintains. It also appears that Syngman Rhee's action in releasing thousands of North Korean prisoners and reportedly inducting them into his own army indicates that he is not persecuting former Communists. Inasmuch as respondent in 1950 was a courier for the Communist group here and carried a laudatory letter to Korea, addressed to a high North Korean official, it appears that his claim, fear of persecution, may actually be a fear of prosecution for a possible criminal act.

The respondent has a wife and two children. His wife is a citizen of Japan; the children are citizens of Korea. Neither the wife nor children have a permanent status in the United States. Respondent alleges that his wife and children also might suffer persecution if returned to Korea. However, he has

Exhibit A—(Continued)

presented no evidence to substantiate such assertion.
Recommendation:

It is recommended that respondent's application
for stay of deportation be denied.

/s/ ROBERT L. NEEDHAM,
Deportation Examiner (Ex-
amining.)

EXHIBIT No. 2

Statement

The undersigned, Johsel Namkung (file No. A6 795 007), was ordered deported by David S. Caldwell, Special Inquiry Officer, on the 19th day of February, 1953, on the ground that the undersigned was affiliated with the Communist Party at the time of his entry into the United States on March 10, 1949. The undersigned failed at the time of his hearing to specify any country to which he wishes to be deported, although there is testimony in the transcript of my hearing concerning my fear of being deported to South Korea. The undersigned has been requested by Cecil F. Vchulek, Acting Chief, Detention and Deportation Section, to prepare a statement of why I fear deportation to South Korea.

The undersigned is absolutely convinced that the amount of hatred and violence of the South Koreans for the North Koreans, resulting from acts and

Exhibit No. 2—(Continued)

tensions in that divided country arising long before the outbreak of open warfare between the two sections of the country, and heightened by the tremendous destruction, loss of life and unbelievable misery of people on both sides of the 38th Parallel, make it certain that one deported from this country to South Korea on charges of affiliating with the Communist Party would suffer probable injury and death in South Korea.

This conclusion is based not only upon my knowledge of the bitterness existing between the Korean people but upon quotations from reliable sources which I include herewith and submit to you in support of my contention that my deportation to South Korea at this time will result in serious consequences to my entire family and to myself.

I am opposed to the terroristic methods of the Communist State—to its state police, absolute thought control, to its insistence on complete conformity, and particularly to its conspiratorial desire to subjugate people who aspire for real freedom whether they be Koreans, Chinese or Americans. However, my opposition to this grave danger does not lessen my opposition to the government and policies of Syngman Rhee. This is my country which he has in part destroyed by his methods—methods of the dictator—methods which destroy human dignity and life of my people. I have long opposed in public the methods and aspirations of Mr. Rhee. I have done this in Korea and I am not in a position, nor do I desire to retract my stand on the

Exhibit No. 2—(Continued)

devastation which he has in part brought upon my country. Please remember that he is in absolute control of South Korea and please remember, too, that the following quotations concerning him and his government are from responsible reporters; from men who have grave fears about Mr. Rhee's government and methods. To force my family and myself into this state without protection is, I submit, the signing of the death warrant of my two children, my wife and myself. This is contrary to the terms of the present immigration act, and this statement and plea is made to request the Attorney General to use his discretion to prevent such a deportation. The material presented below concerns the extent of corruption, police power and abuses which have been existent in Korea and which are still true to a large extent. These tensions do not evaporate overnight, nor will they with the signing of an armistice. These oppressions and wrongs by both sides in Korea as brought about by centuries of division in the country without hope and without the responsibility of freedom and respect for individual rights or safety, simply do not eradicate upon the signing of a paper. These are grave historical hates which we hope may one day be resolved, but such is at best a hope, though a hope, I pray to God to bring about.

I set forth below quotations concerning recent conditions in Korea and bearing upon the situation of my family should we be deported there. They are set forth under headings concerning Mr. Rhee's rise

Exhibit No. 2—(Continued)

to power, how the country is governed and police methods used in the country.

I. How Mr. Rhee became the President of R.O.K.

“In Korea the United States created a government whose ideals are much closer to fascism than democracy. This was not done entirely wilfully. The American occupation authorities would have preferred a more moderate rightist than Dr. Rhee. But they permitted the development of conditions which made Dr. Rhee’s emergence inevitable. To combat communism and stop the advance of Soviet influence, the Americans allied themselves with anti-Communists who have used all the totalitarian techniques of police terrorism, torture, and suppression of liberties for which Americans are wont to condemn communism. The United States wanted a conservative, anti-Communist state but spawned a rightist police-state.” Andrew Roth, *Korea’s Impending Explosion*, Nation, 169, 7, August 13, 1949, page 153.

“Rhee’s well-known hostility to Soviet Russia made him the logical favorite of the American Army authorities for heading up a Korean regime. For a number of reasons, however, Rhee was unable to occupy the preferred position immediately. Many Americans objected to his reactionary methods. Then the heightening tension between the north and south brought the United States into Rhee’s camp. Rhee was recognized as the rallying point of a strong regime which would be ‘safe’ against Communist infiltration.” George N. McCune, *Korea Today*, pages 244 and 245.

Exhibit No. 2—(Continued)

“President Rhee has forfeited his right to continue as head of the Republic of Korea. Dr. Rhee has jailed and hounded into hiding the majority of the National Assembly. The reappearance of terrorist groups which break up meetings of the president’s opponents and organize mobs to intimidate the National Assembly proves the Rhee regime is politically bankrupt.” *Christian Century*. LXIX, 28. July 9, 1952, page 795.

“Dr. Rhee’s personally loyal 60,000-man police force and his penchant for jailing critics of his government’s corruption have aroused strong opposition to his re-election. Last week, Dr. Rhee took steps to see that he would remain President. First, he declared a state of martial law. Next, he had his police jail 11 National Assembly members whom he accused of being involved in a Communist plot * * *” *Time*. LIX, 23, June 9, 1952, page 25.

“Lee (Eum Suk) had been so effective in riding herd on the South Korean Assembly, mobbing the Assembly with young hoodlums and arresting some of its members, that he came out of the battle with too much power to suit Rhee. Since Lee posed a threat, Rhee kicked him out of the Home Ministry and had police, block leaders and village elders pass the word to voters that Rhee’s favorite for the vice-presidency was not Lee * * *” *Time*, LX, 7, August 18, 1952, page 24.

II. How Mr. Rhee runs the Country.

“* * * in 1946 when * * * he (Sygman Rhee) set up his blatantly dictatorial rule, maintained by Jap-

Exhibit No. 2—(Continued)

anese-trained police and his own terrorists, arresting potential opponents, outlawing independent political associations, bestowing benefits—land and concessions and jobs—on his faithful henchman * * *. What with the people he had thrown into jail and those who had been killed and those who were in hiding or had fled to the north, he was in a position to elect a National Assembly which chose his President by a handsome majority. Those elections were well cooked. But by 1950 the United Nations was on hand to supervise that year's voting, and while it was still distorted by government repression and corruption, the tide turned sharply against the President and from that date to this the anti-Rhee forces in the Assembly have been in a majority." Freda Kirchway, "Six Years Too Late," *Nation*, 174, 23, June 7, 1952, page 541.

"Regarding the political situation inside Korea, one of the facts which must not be forgotten is that the invasion of June 25, 1950, came hard on the heels of the election of a National Assembly for the Republic of Korea which was a stunning defeat for President Syngman Rhee. Although the traditional Korean tendency to split into factions returned a parliament in which so many parties were represented, and so many independent deputies seated, that no coherent pattern emerged, one fact was plain—a heavy majority of the members were against the government of President Rhee.

" * * * on November 13 (1950) * * * (the National Assembly) overrode two presidential vetoes and

Exhibit No. 2—(Continued)

passed bills which virtually take out of the executive's hands the activities of the police in proceeding against suspected collaborators and also forbid nationalist (i.e., Rhee) bodies to apprehend, seize, detain, interrogate or punish suspects without recourse to an 11-man commission which the Assembly will form. By thus overriding the presidential veto, the Korean congress * * * revealed that it suspects him of being ready to launch—or at least permit—a reign of terror against civilians." *Christian Century*, LXVII, 4g, November 29, 1950, pages 1414-15.

"Here, briefly, is what the South Korean parliament's investigation showed, as reported by the United Press in a dispatch which appeared in the New York Times on June 13, and presumably in other papers subscribing to that press service. A committee of the National Assembly headed by Suh Min-ho, chairman of its interior affairs and national security committee, reported that 50,000 draftees had died of starvation or disease in Republic of Korea training camps since December. During a forced march of three weeks' duration on their way to the camps, approximately 300,000 men deserted or died along the way * * *. Of the draftees still in training camps, the investigating committee reported that 80 per cent are 'physical wrecks, incapable of labor.'

"The National Assembly's committee placed the responsibility on 'profiteering' by 'corrupt officers' of the Korean forces. It said that more than 2 mil-

Exhibit No. 2—(Continued)

lion dollars appropriated for the training program had disappeared, and intimated that it had landed in the pockets of national guard officers * * * the fact that an atrocity of this kind could go on, building up for months until 80 per cent were physical wrecks, shows an utter incapacity (of Rhee's government) to discharge the responsibilities of office." *Christian Century*, LXVIII, 27, July 4, 1951, page 790.

"As for the corruption of army officers and government officials, the Koreans superceded the Chinese and Japanese. Brig. Gen. Kim Yun-gun, son-in-law of Defense Minister Sin Song-mo and a professional wrestler before he was picked up by the President to become a general, pilfered 2-hap of rice out of every 6-hap which was allocated for a day's ration for servicemen and embezzled 15 billion Won by usurping the material for uniform for 2,000 soldiers. Sin Song-mo, while he was Defense Minister, ordered the secret burial of 170 corpse, the result of massacre (by the South Korean Army on suspicion of collaboration with Red guerrila) in Kochang, South Kyongsang Province, and falsified the order of operation as well as forging the report on the incident. Furthermore, he ordered his underlings to clad in Red uniform and ambush the Joint Investigation Party dispatched by the National Assembly on the way to the spot in order to stall the investigation, but the conspiracy had been revealed before it was materialized." Sawaichiro Kamata, A

Exhibit No. 2—(Continued)

Woe of the Korean People, Kaizo, Vol 33, July, 1952, page 89.

III. Police.

“The most important cause of criticism of the South Korean Interim Government had been the activities of the police and suppression of civil liberties.” McCune, *Korea Today*, page 241.

“Foreign Minister Chang Taiksang * * * had been the chief of the Seoul metropolitan police under the South Korean Interim Government * * * was often the object of bitter criticism * * * because of the brutal and terroristic methods of his police force.” *Ibid.*, page 239.

“The national police administration which we foster is run by anti-Communists, terrorists of the right, and police officers trained largely in Japanese methods. The latter still operate under Japanese law.

“Of course, leftists—like rightists—are guilty of terrorism. Of course, there has been violence in strikes. Of course, the police have been attacked. But such truths do not warrant this wholesale policy of suppression; a suppression which forces many non-Communists to flee to the North in desperation, which causes liberal political leaders to find new quarters every night for fear of the police or of gangs, and which caused the chairman of the legislature, an American appointee, to retire to the

Exhibit No. 2—(Continued)

United States hospital, 10 miles out in the country, because he was 'politically ill.' I found him there, having his temperature taken, and I would not be surprised if it were high, considering the risks he said he ran. And this man damned by the right as a Communist, is a staunch middle-of-the-roader, a Princeton graduate, and chairman of the abortive Coalition Committee selected by the Military Government itself.

"Only extremes are tolerated in Korea. You are either pro-Soviet or rightist. If you happen, actually, to be a liberal, if you feel that the pro-Japanese collaborators must be purged, that the police must be removed from politics, that unions should have freedom to strike, and that Northern and Southern Korea must be reconciled—then you are a Communist." Roger N. Baldwin, *Our Blunder in Korea*, Nation, 165, 5, August 2, 1947, page 120.

"Much of the evidence against these collaborators (with the Japanese) has been collected by the National Assembly's 'Special Committee on National Traitors,' using its own police because the regular police force is filled with collaborators. Early in June the headquarters of the anti-quisling agency was raided by the regular police, who seized documents and arrested the special police. When the committee's chairman tried to stop them he was told, 'We do this on the personal orders of President Rhee.' Afterward, the police were forced to set free the 22 prisoners they had taken on this raid. Sixteen of

Exhibit No. 2—(Continued)

them had broken ribs, skull injuries, or broken eardrums.” Andrew Roth, *Korea’s Impending Explosion*, Nation, 169, 7, August 13, 1949, page 152.

“A Korean national, named Kim Po-song, was arrested on account of espionage and tried by a military court, but was released later because of insufficient evidence. He was found guilty, however, by the Japanese Immigration authorities for having violated the Alien Registration Act and was deported to South Korea, where he was executed later.” *Chuokoron*, Vol. 67, September, 1952, page 73.

“Government forces displayed a brutal vengeance in handling prisoners and suspected dissident elements (when the Yosu rebellion was suppressed). While attributing the revolt to Communist leadership and inspiration, informed parties acknowledged privately that police brutality and repression had attracted many followers to the rebels.” McCune, *Korea Today*, page 242.

A recent example of the continued tension in Korea and the continued anger of Mr. Rhee is indicated in an Associated Press story from Washington, D. C., dated April 12, 1953, as taken from the *Portland Oregonian* on April 13, 1953:

“South Korean President Syngman Rhee made an apparent effort to head off any peace plans based on a divided Korea.

“ ‘Any settlement of the Korean war which leaves us divided will be considered by our people as ap-

Exhibit No. 2—(Continued)

peasement of the Communists,' Rhee declared in a statement radioed to his country's embassy here.

“The South Korean leader urged unification of his nation through ‘victory at the Yalu river, our age-old northern boundary.’ This, he said, ‘will not only be a victory for Korea, the present frontier of freedom, but a victory for the entire free world.’

“It was obvious that Rhee’s statement was aimed at published reports on decisions made or under study to divide Korea at its narrow waist—some 80 to 100 miles north of the present battleline, for it contained this reference:

“‘Any settlement, along any broad or narrow waist of our peninsula, will be a victory for aggressive communism.’ ”

Dated at Seattle, Washington, this 15th day of April, 1953.

Respectfully submitted.

JOHSEL NAMKUNG.

State of Washington,
County of King—ss.

On this day personally appeared before me Johsel Namkung, to me known to be the individual described in and who executed the foregoing statement, and acknowledged to me that he signed the same as

Exhibit No. 2—(Continued)

his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and seal this 23rd day of April, 1953.

/s/ KENNETH A. MacDONALD,
Notary Public in and for the State of Washington,
Residing at Seattle.

EXHIBIT No. 3

U. S. Department of Justice
Board of Immigration Appeals

File No. A-6795 007

In the Matter of:

JOSHEL NAMKUNG.

AFFIDAVIT

State of Washington,
County of King—ss.

Joshel Namkung, being first duly sworn, on oath, deposes and says:

That I have been requested by John P. Boyd, District Director, Immigration and Naturalization Service, 815 Airport Way, Seattle 4, Washington, to submit a formal request for stay of deportation and setting forth in it in detail my reasons for the request and any evidentiary material I have to sup-

Exhibit No. 3—(Continued)

port my claim of persecution in the event of my deportation to Korea.

Accordingly, I hereby request from the Attorney General a stay of deportation from the United States because it is my confirmed belief that my wife, my children and myself will be subjected to physical persecution in the event of our deportation to Korea at this time or in the foreseeable future. I also ask by way of this affidavit for an opportunity to give sworn testimony concerning my fear of persecution in Korea before an officer of the immigration service.

Much of my evidence to be submitted and the statements submitted herewith must be hearsay; I am or not have been in South Korea recently, nor can I produce live witnesses to testify to the facts which I believe to be true. The only thing that I can do is to submit to the immigration service opinions of responsible people who are observing the Korean scene today. These observations certainly demonstrate the lack of respect for human life in Korea today.

There is no writ of habeas corpus in Korea, and, thus if I were taken or imprisoned, there would be no process such as we in the United States have to make certain that I be granted any trial whatever, or that I have any protection from the power of the South Korean government.

The concern of the entire free world over the excesses of Mr. Rhee are now apparent. These excesses

Exhibit No. 3—(Continued)

include the release of war prisoners in outright disregard of his commitments, his intransigence in dealing with Secretary of State Dulles and his emissary, Mr. Walter S. Robertson, Assistant Secretary of State, the physical beating accorded to the only leader opposing Mr. Rhee in South Korea, and lately his determination to march north at a time 90 days after the truce if Korea is not unified by that time under South Korean rule.

I set forth quotes from recent issues of the New York Times in support of the foregoing facts:

1. Senator Alexander Wiley of Wisconsin and the leader of the Eisenhower Administration's foreign policy positions recently said:

“I want to express the firm view that President Rhee is doing his nation, the UN as a whole and the cause of world peace infinite damage by his continued reckless attitude, * * *” (Senator Wiley) said, “Today, however, he has carried his views to such an illogical extreme as to jeopardize the efforts of the free world to protect his country. President Rhee in his patriotic zeal has displayed an unfortunate extremism, obstinacy and arbitrariness which have caused infinite grief to the parents of every boy in the UN forces serving alongside the South Korean divisions.”

If the present situation deteriorates to its most dangerous potentialities, the lives of 300,000 American boys in South Korea will be directly endangered.

Exhibit No. 3—(Continued)

“Wiley Calls Rhee Reckless Man Who Imperils the Cause of Peace.” *The N. Y. Times*. Jl. 8, 3:3.

2. General news reactions indicative to Mr. Rhee’s irresponsibility and aggressiveness follow:

“The South Korean move was generally viewed as a desperate effort by the Rhee government to torpedo the negotiations on the virtual eve of a truce signing and force a continuation of the fighting.” *N. Y. Times*. Je. 18, 53, 1:7.

Walter S. Robertson, Assistant Secretary of State: “Mr. Robertson was infuriated at the apparent breach of agreement, particularly since it could lead the Communists to believe that the UN command was not signing an armistice in good faith. A strong protest was made to Dr. Rhee.” *N. Y. Times*. Jl. 13, 3:1.

Dag Hammarskjold, the Secretary General’s careful warning came next: “It is a curious sight, indeed, when a victim of aggression voices intentions which might themselves call for repression in the name of those very principles which have given him protection when he was attacked. * * *” “U. N. Weighs Steps if Truce Is Broken.” *N. Y. Times*. Jl. 11, 3:1.

3. News reactions to the beating and subsequent arrest of Chough Pyung Ok follow:

“Rhee Challenger Is Beaten in Seoul. A political opponent of President S. Rhee was beaten early today shortly after a mob of about 500 South

Exhibit No. 3—(Continued)

Koreans ransacked his home and destroyed its fixtures.

“Six unidentified assailants found Dr. Chough Pyung in hiding after the angry crowd stormed his residence. Mr. Chough, former Home Minister and a defeated Vice-Presidential candidate, was beaten severely on the head.

“Only a few hours before his home was attacked last night, he spoke out bluntly against Dr. Rhee’s arbitrary policies regarding a Korean armistice.

“He told a news conference Dr. Rhee’s ‘unilateral action’ last week in ordering the release of more than 27,000 anti-communist Korean war prisoners was ‘unwise’ and might isolate South Korea from the free world.

“Mr. Chough, a leader in the opposition Democratic Nationalist party, expressed belief the prisoners should have been freed one or two years ago—not after Allied or Communist truce teams had agreed upon their disposition.

“After storming into Mr. Chough’s home, the crowd took away the furniture and proceeded to the residence of his aide, Ko Hung Moon. Mr. Ko also was beaten and his house ransacked.

“Mr. Chough served as South Korea’s Ambassador at Large to the United Nation’s General Assembly in Paris in 1948 as a Korean observer. Dr. Rhee removed him as Home Minister in 1950.

“His party, made up primarily of bankers, landowners and businessmen, is the strongest opposition group in the republic.” N. Y. Times. Jl. 24, 3:4.

Exhibit No. 3—(Continued)

“South Koreans Calm Down, Avoid All Demonstrations. By Greg MacGregor.”

“The recent arrest of Chough Pyung Ok, former Home Minister and current leader of the strongest opposition party, the Democratic Nationalists, has done little to increase President Rhee’s popularity.

“Mr. Chough, 59-year-old member of the National Assembly, was seized, beaten and then jailed for daring to speak in favor of the UN and against the particular process of unification that President demanded. Also, Mr. Chough dared to criticize President Rhee for ordering the release of the 27,000 Anti-Communist prisoners of war.

“Mr. Chough will be tried shortly under the national security code, along with three of his supporters. If he is found guilty, a death penalty could be imposed.” N. Y. Times. Jl. 19, IV, 5:6.

“The South Korean National Police today released Chough Pyung Ok, opposition political leader, who publicly criticized President Syngman Rhee’s release of 27,000 Anti-Communist war prisoners.

“The government prosecutor’s office said Mr. Chough was released on parole but that he still was being investigated. He had been charged with violating the National Security Law and had been indicted.

“Mr. Chough had said that Dr. Rhee’s release of the war prisoners, which almost wrecked the Korean armistice talks, was ‘unwise.’ Shortly afterward, he

Exhibit No. 3—(Continued)

was beaten up by a young pro-Rhee group. He was jailed last month.

“Meanwhile, President Rhee’s Liberal Party, with a heavy majority of votes in the N. A., passed a resolution branding as ‘traitors’ the men who opposed the President’s policy of resisting an armistice. It recommended that opposition leaders, Chough Pyung and former justice, Min Kim Choon Yun, be exiled from the country.” *N. Y. Times*. Jl. 25, 3:4.

“The government refused to confirm or deny his (Chough’s) arrest until this morning, when Dr. Karl Hong Ki, director of information, issued this statement: ‘Despite Chough’s being on probation on an indictment, he indiscriminately misled the public by words and deeds, resulting in a very, very difficult situation in public peace and inviting national indignation. Thereby, he endangered his own life and requires special protection. The organization which now detains Mr. Chough will in due course give the public an explanation on the matter.’” *N. Y. Times*. Jl. 27, 2:6.

“Rhee Counts on Koreans to Back Him in Crisis. By Greg MacGregor.”

“Although the South Korean government structure is democratic in form, there are many who might term it a police state under the conditions that exist today. It is obviously unhealthy to criticize the president publicly. The opposition leader—Chough Pyung Ok, secretary general of the National Democratic party—found this out last week

Exhibit No. 3—(Continued)

after he had condemned the Chief Executive for freeing the Anti-Communist war prisoners and had urged that the UN armistice terms be accepted.

“Shortly after holding his press conference, Mr. Chough, who controls thirty out of the 183 seats in the National Assembly, claimed that he was misquoted. The damage had been done, however, and that night Mr. Chough received some tough and unwelcome visitors in his home. He is hoping to be up and around again toward the latter part of this week.” N. Y. Times. Je. 28, IV, 3:4.

4. Mr. Rhee is currently undertaking a renewed drive against alleged subversives:

“Rhee Drives to End Fraud, Subversion. Editor Held on Spying Charge—3 Army Officers on Trial—Youth Units Dissolved.”

“President Syngman Rhee is waging a campaign to rid the Republic of Korea Government of corruption and suspected subversives.

“In addition, Dr. Rhee has ordered the South Korean Army’s counter-intelligence corps to investigate and arrest Koreans suspected of engaging in Communist espionage or Anti-Government activities. The corps arrested a well-known South Korean newsman, Chung Kook Eun, on charges of spying, and he has been undergoing severe interrogations since he was taken into custody Aug. 31.

“Three high-ranking officers of the South Korean Army, including the former chief of the Army In-

Exhibit No. 3—(Continued).

telligence Bureau, Brig. Gen. Kim Chong Pyung, are being tried by the highest military court at Taegu on charges of having violated the National Defense Law.

“The National Police have arrested their former assistant director, Kim Eang Bong, on charges of having plotted against the government. The police alleged that he had formed an ‘unauthorized’ group, with more than 1,300 members, in an attempt to ‘overthrow the Government.’ ” N. Y. Times. September 13, 1953, 3:6. (Emphasis supplied.)

5. Mr. Rhee’s still continuing desire to forcefully bring about the unification of his country and his desire to wage war if necessary to that end is explained in a long article attached hereto from the New York Times for Sunday, October 4, 1953. The article is by William J. Jorden and is entitled, “Rhee’s Korea Feels Sure Foe Doesn’t Want Peace.”

Conclusion

If Syngman Rhee treats trusted former allies and trusted officials in the manner indicated above, how will he treat a person who has been found in the United States to be affiliated with a subversive organization and deported for that reason?

It is clear to me that my wife, my family and myself would immediately be arrested and persecuted. I doubt that we would even be arrested; I suggest that under today’s conditions in Korea that

Exhibit No. 3—(Continued)

my family would simply disappear or be found dead.

/s/ JOHSEL NAMKUNG.

Subscribed and Sworn to before me this 27th day of October, 1953.

[Seal] /s/ FRANCIS HOAGUE,
Notary Public in and for the State of Washington,
Residing at Seattle.

EXHIBIT B

(Copy)

Form W-4a.

Immigration and Naturalization.

United States of America
Department of Justice

Immigration and Naturalization Service

WARRANT OF DEPORTATION

No. A 6,795,007.

To: Chief, Detention and Deportation Section, Immigration and Naturalization Service, Seattle, Washington.

Or to any Officer or Employee of the United States Immigration and Naturalization Service.

Whereas, after due hearing before an authorized officer of the United States Immigration and

Exhibit B--(Continued)

Naturalization Service, and upon the basis thereof, an order has been duly made that the alien, Johsel Namkung, who entered the United States at Seattle, Washington, on the 10th day of March, 1949, is subject to deportation under the following provisions of the laws of the United States, to wit: Section 241(a) of the Immigration and Nationality Act, in that he was, at the time of entry, a member of the following class of aliens excludable by the Act of October 16, 1918, as amended: An alien who was affiliated with the Communist Party of the United States.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his direction, do hereby command you to take into custody and deport the said alien pursuant to law, at the expenses of the appropriate "General Expenses, Immigration and Naturalization Service, 1953," including the expenses of an attendant if necessary.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 8th day of April, 1953, at Seattle, Washington.

/s/ JOHN P. BOYD,
District Director,
Seattle District.

EXHIBIT C

(Copy)

A6 795 007

December 14, 1953.

Assistant Commissioner, Border Patrol, Detention
and Deportation Division, Central Office,

John P. Boyd, District Director,
Seattle, Washington.

Johsel Namkung, your September 28, 1953.

In accordance with your subject communication,
herewith is recommendation of the examining officer
and record of interview with attached exhibits.

/s/ JOHN P. BOYD.

Enclosures

RLN :mo

EXHIBIT D

(Copy)

A6 795 007

January 5, 1954.

Assistant Commissioner, Border Patrol, Detention
and Deportation Division,

John P. Boyd, District Director,
Seattle, Washington.

Johsel Namkung, Your September 28, 1953.

In connection with your subject communication,
reference is made to record of interview, attached

Exhibit D—(Continued)

exhibits and recommendation of the examining officer in subject case forwarded to the Central Office on December 14, 1953.

Since these documents were forwarded for review, this office has received from the Korean Consulate General, San Francisco, California, a letter which appears to be pertinent to the issues involved. Copy of such letter is attached for your information.

/s/ JOHN P. BOYD.

Attachment

RLN:mo

Korean Consulate General
San Francisco, California

December 29, 1953.

Dear Mr. Boyd:

Ref: Johsel Namkung—A6-795-007.

Mr. Namkung's fear of persecution by the Government of the Republic of Korea is without foundation. It is true that our Government has abolished the Communist Party as a political party because of their subversive activities against the people and the Government of Korea under the direction of Moscow.

Any former Communist party member who really turned away from this traitorous organization and returns to the ranks of freedom loving people of

Exhibit D—(Continued)

the world, he has nothing to fear because our Government forgives all those who renounced the red doctrine.

Mr. Namkung confided to this writer in January, 1952, that he is no longer a member of the Communist party after he learned that his father, Rev. Namkung Hyuk, a Presbyterian Minister in Seoul, was carried away by the fiendish red hordes into northern Korea when our armed forces dealt them a stunning blow in the fall of 1950.

The Korean Government always welcomes home with open arms all those Prodigal Sons who truly repented and return home for mercy and guidance.

I hope this will assist you in carrying out justice.

Sincerely yours,

/s/ YOUNG HAN CHOO,
Consul General.

Mr. John P. Boyd,
District Director,
U. S. Department of Justice,
Immigration & Naturalization Service,
815 Airport Way,
Seattle 4, Washington.

EXHIBIT E

(Copy)

Standard Form No. 64.

Office Memorandum

United States Government

A-6795007

February 15, 1954.

To: District Director,
Seattle, Washington.

From: W. F. Kelly, Assistant Commissioner,
Border Patrol, Detention and Deportation Division.

Subject: Johsel Namkung—A-6795007—Claim of
physical persecution.

After careful consideration of the material the alien has submitted and of his own testimony in support of his claim that he would be subject to physical persecution if deported to Korea, it is not my opinion that the alien would be subject to physical persecution if deported to that country.

You should proceed, therefore, to execute the outstanding warrant of deportation in this case.

/s/ W. F. KELLY.

Via Air Mail.

[Endorsed]: Filed April 2, 1954.

[Title of District Court and Cause.]

AMENDED RETURN

John W. Keane states that he is an attorney with the United States Immigration and Naturalization Service; that in his official capacity he is authorized to make in behalf of John P. Boyd, District Director and respondent herein, the following amended return.

Allegation No. V as amended to read as follows:

There is attached and made a part of this return, identified as Exhibit A, a transcript of the interview accorded the petitioner December 2, 1953, on his application for a stay of deportation, together with Exhibits No. 1 through 5, inclusive.

/s/ JOHN W. KEANE,
Attorney for the Respondent, John P. Boyd, District Director, Immigration & Naturalization Service, Seattle.

I hereby certify that a copy hereof was served by mail on MacDonald, Hoague and Bayless, Attorneys at Law, 602 New World Life Building, Seattle, Washington.

Dated April 13, 1954.

/s/ JOHN W. KEANE.

EXHIBIT A

United States of America
Department of Justice
Immigration and Naturalization Service
Seattle, Washington

April 13, 1954.

Certification

By Virtue of the authority vested in me by Title 8, Code of Federal Regulations, Section 2.1, a regulation issued by the Attorney General pursuant to Section 103 of the Immigration and Nationality Act,

I hereby Certify that the annexed documents are originals, or copies thereof, from the records of the said Immigration and Naturalization Service, Department of Justice, relating to Johsel Namkung, File No. A-6 795 007, of which the Attorney General is the legal custodian by virtue of Section 103 of the Immigration and Nationality Act.

In Witness Whereof I have hereunto set my hand and caused the seal of the Department of Justice, Immigration and Naturalization Service, to be affixed, on the day and year first above written.

[Seal] /s/ L. W. WILLIAMS,
Acting District Director, Immigration and Naturali-
zation Service, Seattle District.

EXHIBIT No. 1

Joseph H. Namkung,
417 Kishimoto Bldg.,
Marunouchi, Tokyo,
Japan.

October 20, 1953.

Johsel Namkung,
2017-18th Ave. So.,
Seattle, Washington,
U.S.A.

To Johsel:

I am writing this letter to you especially because I was so humiliated at the Ministry of Foreign Affairs when I visited Seoul on business recently. [An official] of the Ministry told me that you had been engaged in the "red" activities even before the June 25th Incident [the Korean War] had occurred, and since the United States Government had decided to deport you [from the U. S.] they had come a decision to revoke your passport, and he even showed me your passport.

[The folks] in Korea, as well as I, are startled of the implication. The reputation of the Namkung family in Korea is gravely impaired by this.

Don't you care whether your father is taken prisoner by those villains? Why do you have to share the idea of those thieves?

It is too obvious that you cannot be a red and

Exhibit No. 1—(Continued)

they would never accept you as one. You should see the facts of purges taking place inside the North Korea.

Why on earth do a sensible fellow as you have to take such a foolish path? If you insist upon going that way, there is no other way than severing the brotherhood between us. Unless you are repentant of your past mistake and make a public announcement to the society of your pledge not to retake the same path you have been in, your future will be nothing but dreadful one. And not only you but all the brothers in the family, though not in your way [of thinking], will fall into the same fate. It is hard on us to be treated unjustly.

I want to give you a final advice. Should you be a red, though I pray not, please awake and bring yourself to the right course, and make your stand clear. Mother is in tears every day for not having excuse to offer to the society.

I hope to hear a good news from you and wish you would follow the right course at once.

Your Brother.

This is to certify that I, Johsel Namkung, have translated the letter in Korean attached hereto, and that my translation into English is accurate.

/s/ JOHSEL NAMKUNG.

Exhibit No. 1—(Continued)

Subscribed and sworn to before me this 2nd day
of December, 1953.

[Seal] /s/ KENNETH A. MacDONALD,
Notary Public in and for the State of Washington.
Residing at Seattle.

[Envelope]

[Cancelled Stamps and Postmark]

Joseph H. Namkung,
417 Kishimoto Bldg.,
Marunouchi,
Tokyo, Japan.

Mr. Johsel Namkung,
2017-18th Ave. So.,
Seattle, Wash.,
U. S. A.

Via Air Mail

EXHIBIT No. 4

Rhee Reaffirms R. O. K. Will
Fight if Nation Isn't Unified

The Seattle Daily Times

Seattle, Washington, Wednesday, November 4, 1953

Resumption of
War Hinges on
Peace Talks,
Say R. O. K.

By GEORGE McARTHUR
Associated Press Foreign Staff

SEOUL, Nov. 4.—President Rhee today reaffirmed his decisions to drive the Communists out of North Korea if a postarmistice political conference fails to unify his country—or is not held.

The white-haired South Korean chose this particular time—with preliminary political talks at Panmunjom stalemated—to answer questions submitted to him by the Associated Press weeks ago.

Election Plan Offered

In his written answers Rhee reaffirmed his position and said he favored holding elections in all Korea, once the country is unified.

Rhee advanced a two-part election plan for a unified Korea. Under his plan, his South Korean government would “allow” North Koreans to hold an election of their own under the observation of the U. N.

Exhibit No. 4—(Continued)

“If the free people of North Korea should elect someone other than the President of the Republic of (South) Korea, I would be glad to step aside and let the entire nation (of South and North Korea) held a nation-wide election,” Rhee said.

Rhee said he doubts if any questions can be settled peacefully at a postarmistice peace conference.

“In the event the political conference fails, or is never held, the Republic of Korea must act to unify Korea and drive from our soil the Chinese who now are settling in the north with the idea of eventually seizing the whole country,” Rhee said.

“In this action we would welcome the support of the United States and the United Nations, but we do not ask them to stay, against their wish, solely for the sake of Korea. If they do not feel now, as they did at the beginning of the war, that the fight for Korea is a fight for themselves, then we do not urge them to do any more fighting in Korea.”

Rhee said that at the time of the Korean armistice—July 27—South Korea agreed to postpone its determination to take unilateral action if necessary to drive all Chinese Reds out of Korea.

Deadline—January 28

The 90-day delay set by South Korea presumably is for a period of 90 days after October 28, the day the armistice document calls for convening the peace conference. This would make Rhee’s deadline for success of the peace conference January 28.

(Rhee attacked suggestions that India be given a

Exhibit No. 4—(Continued)

limited role in the peace conference as a compromise to Red demands for neutral participation, the United Press reported. "Let India come to the Conference as a Communist state," Rhree said. "But as a neutral, never!")

Rhee criticized Indian troops guarding prisoners who refuse to return home and India itself as "pro-Communist."

EXHIBIT No. 5

The Seattle Times

Thursday, November 5, 1953.

Roks May

Court-Martial

Ex-P. O. W.'s

PUSAN, Korea, Nov. 5.—(AP)—The South Korean government may court-martial 60 R. O. K. soldiers in the prisoner-of-war exchange as "victims of Communist brain-washing," a reliable source said today.

All prisoners returned by the Reds have undergone "intensive screening" on isolated Yongcho Island, the R. O. K.-army source said, and only 60 of 7,848 failed to pass.

The source said the 60 face charges of being "subversive" and their cases will be studied by a court-martial board which will decide whether to try them.

[Endorsed]: Filed April 13, 1954.

[Title of District Court and Cause.]

TRAVERSE

The traverse of the petitioner, Johsel Namkung, by his attorney, Kenneth A. MacDonald, respectfully shows and he alleges:

I.

Petitioner admits and denies the allegations in the Return to the Order to Show Cause as follows:

Allegations I, II, III, IV and V, as amended, found on pages two to four, inclusive, of said Return are admitted, except that petitioner has no information or knowledge of whether or not Exhibits 1, 4 and 5 have been requested from Washington, D. C., and, therefore, denies that allegation.

For answer to the conclusions set forth on pages one and two of said Return, petitioner alleges as follows:

I.

The procedure followed in considering petitioner's application to the Attorney General for a Stay of Deportation was irregular, unfair and not in compliance with the statute, the regulations, or the Constitution of the United States, in that:

1. The decision of the Assistant Commissioner Border Patrol, Detention and Deportation Division, attached to the return as Exhibit E, was based on a recommendation by a subordinate, Robert L. Needham, Deportation Examiner (examining). Robert L. Needham exceeded the authority conferred upon

him by 8 CFR 243.3(b) in that he made an adverse recommendation in regard to petitioner's application for a stay of deportation. The foregoing regulation provides that the decision of the Assistant Commissioner Border Patrol, Detention and Deportation Division shall be based upon evidence; the regulation does not contemplate that the decision shall be affected in any way by the findings and recommendations of a subordinate. The procedure in regard to the application for a stay of deportation was rendered further objectionable by the fact that the subordinate in question, the said Robert L. Needham, had previously and is presently serving in the Immigration and Naturalization Service at the Port of Seattle as an examiner on subversive cases and that he has investigated subversive cases, including the case of petitioner; further, that Robert L. Needham had presented evidence against petitioner at petitioner's deportation hearing held before Special Inquiry Officer David S. Caldwell, decided February 19, 1953; that at the time Robert L. Needham made his adverse recommendation in the proceeding based upon petitioner's request for stay of deportation, there was no evidence in the record upon which Mr. Needham could have based his recommendation.

2. The decision of the Assistant Commissioner as aforesaid was based on evidence introduced into the record of the proceedings after the close of the proceedings before Mr. Needham. Exhibit D, attached to the Amended Return, and consisting of

a letter from the Korean Counsul General in San Francisco, dated December 29, 1953, was not brought to the petitioner's attention until after the Assistant Commissioner had rendered his decision and after the commencement of the habeas corpus proceedings herein. At not any time has petitioner had an opportunity to examine any witnesses concerning the accuracy of the facts and opinions set forth in said letter, or has he had the opportunity to introduce any rebuttal testimony in any proceeding before the Attorney General or his delegates. The late introduction of said letter into the record has prevented the petitioner from seeking a modification or vacation of the Assistant Commissioner's decision in accordance with regulations (8 CFR 6.21a).

3. Petitioner was obliged to bring the instant petition for a Writ of Habeas Corpus in order to compel the Immigration Service to disclose the findings of the Assistant Commission Border Patrol, Detention and Deportation Division; this failure to serve the decision of said Assistant Commissioner upon petitioner was contrary to the regulations (8 CFR 243.3(c)) and prevented petitioner from moving to vacate or modify the decision of the Assistant Commissioner.

II.

The Attorney General delegated improperly the power granted to him to withhold deportation of petitioner in accordance with the governing statute.

It is respectfully urged that petitioner has not been accorded a hearing and review by the Immi-

gration Service in his claim of physical persecution, as required by the governing statute; that the petition herein should be granted, petitioner discharged from custody under the outstanding warrant for deportation, and the cause remanded to the Immigration Service for proceedings in accordance with law.

/s/ KENNETH R. MacDONALD,
Attorney for Petitioner.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed April 30, 1954.

[Title of District Court and Cause.]

STIPULATION

It Is Stipulated by the parties to this action and their respective counsel that the matters set forth below are agreed matters of fact:

(1) That the following colloquy took place between the Special Inquiry Officer and Johsel Namkung during his deportation hearing January 20, 1953, at 815 Airport Way, Seattle, Washington, and the same appears in the written transcript of the hearing at pages 40-41:

“Q. Is there any particular reason why you don't desire to return to Korea?

“A. Yes. It's quite evidence I would be persecuted if I ever get into Korea.

“Q. What do you mean by that, 'It's quite evident'?

“A. The South Korean government is well known as anti-Communist and their ruthless means of suppressing Communists or Communist suspects are well known among the western countries.

“Q. Isn't it true that quite recently, as a matter of fact, former members of the North Koreans who were actually South Koreans, deserted the North Korean army and were welcomed back by the South Koreans and by their families, practically with open arms, for having left the North Korean army and having had a change of heart?

“A. In theory that is correct, but in action it hasn't been exactly in that way.

“Q. You have seen, have you not, some of these magazine articles on that particular phase? I believe one appeared in a recent issue of Life Magazine, an article and a series of pictures devoted to deserters from the North Korean army?

“A. No, I haven't seen it.”

(2) That Cecil F. Vchulek, Chief, Detention and Deportation Section, U. S. Immigration and Naturalization Service, 815 Airport Way, Seattle, Washington, acting for the respondent, did on February 18, 1954, by letter request Johsel Namkung to call at his office for an interview; that on or about February 19, 1954, Johsel Namkung appeared at said office and the said Cecil F. Vchulek did at that time advise Johsel Namkung orally that his application for suspension of deportation upon his claim to physical persecution had been denied by the Assistant Commissioner, Immigration and Naturalization Service, and he was further advised

that arrangements were being made for his deportation.

/s/ F. N. CUSHMAN,
Assistant United States
Attorney.

/s/ JOHN W. KEANE,
Attorney, Immigration &
Naturalization Service.

/s/ KENNETH A. MacDONALD,
Attorney for Petitioner.

[Endorsed]: Filed June 1, 1954.

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 3670

THE UNITED STATES OF AMERICA, ex rel.
JOHSEL NAMKUNG,
Petitioner,

vs.

District Director of Immigration and Naturaliza-
tion at the Port of Seattle, State of Washing-
ton, JOHN P. BOYD,
Respondent.

ORDER

This matter came before the court for hearing on
June 1, 1954, the petitioner appearing by counsel,
Kenneth A. MacDonald, and the respondent, the

District Director, being represented by F. N. Cushman, Assistant United States Attorney, and John W. Keane, Attorney, Immigration and Naturalization Service, and evidence having been considered and oral arguments heard, and the court having determined that the proceedings before the Immigration officials upon the petitioner's application for suspension of deportation under 8 USCA 1253(h) were not infected with unfairness such as denied the petitioner due process of law,

Now, Therefore, It Is Ordered, Adjudged, and Decreed that the application of Johsel Namkung for a writ of habeas corpus be and the same is hereby denied and the rule to show cause heretofore issued is discharged.

It Is Further Ordered that deportation of the petitioner be stayed pending appeal to the Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 3rd day of June, 1954.

/s/ WILLIAM J. LINDBERG,
United States District Judge.

Presented and approved by:

F. N. CUSHMAN,

By /s/ WILLIAM A. HELSELL,
Assistant United States Attorney.

Approved as to form:

/s/ KENNETH A. MacDONALD,
Attorney for the Petitioner.

[Endorsed]: Filed June 3, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Johsel Namkung, petitioner above named, hereby appeals to the United States Court of Appeals for the 9th Circuit from the final judgment entered in this action on June 3, 1954.

/s/ KENNETH A. MacDONALD,
Attorney for Appellant,
Johsel Namkung.

[Endorsed]: Filed June 3, 1954.

[Title of District Court and Cause.]

DEPOSIT FOR COSTS ON APPEAL

Comes Now, Johsel Namkung, Petitioner-Appellant in the above-entitled action, and deposits with the Clerk of the United States District Court of the Western District of Washington, Northern Division, \$200.00 cash in lieu of a surety bond on appeal to the United States Court of Appeals for the Ninth Circuit, to reverse a judgment of June 3, 1954, rendered in the above-entitled action and Court by Judge William J. Lindberg.

This deposit is made and shall be conditioned to secure the payment of costs if the appeal is dismissed, or the judgment affirmed, or of such costs

as the appellate court may award if the judgment is modified.

/s/ JOHSEL NAMKUNG,
Petitioner-Appellant.

The foregoing deposit for costs on appeal is hereby approved as to amount this 1st day of July, 1954, and on this day the filing of the foregoing deposit for costs on appeal subsequent to the giving of notice of appeal is consented to.

/s/ WILLIAM J. LINDBERG,
District Judge.

The foregoing deposit for costs on appeal is hereby approved as to amount this 1st day of July, 1954.

/s/ F. N. CUSHMAN,
Assistant United States Attorney, Western District
of Washington.

Presented by:

/s/ KENNETH A. MacDONALD,
Attorney for Petitioner-
Appellant.

[Endorsed]: Filed July 1, 1954.

[Title of District Court and Cause.]

COST BOND ON APPEAL

Johsel Namkung, Petitioner-Appellant, is hereby held and firmly bound unto District Director of Immigration and Naturalization of the Port of Seattle, John P. Boyd, in the sum of two hundred (\$200.00) cash lawful money of the United States of America to be paid to the said District Director of Immigration and Naturalization of the Port of Seattle, John P. Boyd, to which payment well and timely to be made, I bind myself, my successors and assigns by these presents.

The Condition of this obligation is such that if the above-named Johsel Namkung shall prosecute this said appeal and shall pay all costs if the appeal is dismissed or the judgment or decision of the United States District Court is affirmed, or such costs as the Appellate Court may award if the judgment and decision of the United States District Court is modified, then this obligation shall be void, otherwise to remain in full force and effect.

/s/ JOHSEL NAMKUNG,
Principal.

This Costs Bond on Appeal approved this 2nd day of July, 1954.

/s/ WILLIAM J. LINDBERG,
District Judge.

This Cost Bond on appeal approved this 2nd day of July, 1954.

/s/ F. N. CUSHMAN,
Assistant United States
Attorney.

Presented by:

/s/ KENNETH A. MacDONALD,
Attorney for Petitioner-
Appellant.

[Endorsed]: Filed July 2, 1954.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated, subject to the approval of the United States District Court, that the time in which the record on appeal in the above-entitled case shall be filed with the United States Court for the Ninth Circuit and there docketed, shall be extended to and including, the second day of August, 1954.

/s/ KENNETH A. MacDONALD,
Attorney for Petitioner-
Appellant.

CHARLES P. MORIARTY,
U. S. Atty;

By /s/ F. N. CUSHMAN,
Assistant U. S. Atty.

/s/ JOHN W. KEANE,
Attorney for United States Immigration and Nat-
uralization Service.

[Endorsed]: Filed July 2, 1954.

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
TO FILE AND DOCKET RECORD ON
APPEAL

This Matter having come on duly and regularly before the undersigned United States District Judge, upon the oral motion of petitioner and through his attorneys, MacDonald, Hoague and Bayless, for an order extending time to file and docket the record on appeal in the above-entitled case, pursuant to the provisions of Rule 73(g) Federal Rules of Civil Procedure, petitioner appearing in person and through his attorneys MacDonald, Hoague and Bayless, by Alec Bayless and respondent appearing by and through John Keane for the United States Immigration and Naturalization Service and through Charles P. Moriarty by F. N. Cushman, Assistant United States Attorney, and

It appearing to the Court that Notice of Appeal to the United States Court of Appeals for the Ninth Circuit was duly and timely taken on June 3, 1954, and that less than forty days have expired from the date of filing the said Notice of Appeal and that the period for filing and docketing of said appeal has not expired and the Court having considered the stipulation of the counsel for petitioner-appellant and respondent-appellee, agreeing to extend the time for filing the record on appeal in this case to and including, the second day of August, 1954, and the Court being fully advised in the premises, Now Therefore

It Is Ordered that the time for filing and docketing the Record on Appeal in the above-entitled case be and it is hereby extended to and shall include the second day of August, 1954.

Done in Open Court this 2nd day of July, 1954.

/s/ WILLIAM J. LINDBERG,
United States District Judge.

Presented by:

/s/ ALEX BAYLESS,
Of Counsel for Petitioner.

Approved:

/s/ JOHN W. KEANE,
Of Counsel for U. S. Immigration and Naturaliza-
tion Service.

Approved:

CHARLES P. MORIARTY,
United States Attorney;

By /s/ F. N. CUSHMAN,
Assistant United States
Attorney.

[Endorsed]: Filed July 2, 1954.

[Title of District Court and Cause.]

CONCISE STATEMENT OF POINTS ON
WHICH APPELLANT INTENDS TO RELY

Appellant through his attorney of record hereby designates the Concise Statement of Points on which Appellant intends to rely in the instant appeal.

1. Appellant was entitled to receive the full protection of the Fifth Amendment to the United States Constitution at his December 2, 1953, interview concerning his fear of physical persecution if deported to South Korea. A failure to accord to him this protection voids his Order of Deportation.

2. The regulations promulgated by the Attorney General of the United States implementing section 243(h) of the Immigration and Nationality Act of 1952 (8 U.S.C.A. 1101 et seq.), being 8 C.F.R. 243.3(b), 8 C.F.R. 243.3 (3) and 8 C.F.R. 6.21 have the force of law, are binding upon the Attorney General and a failure to comply therewith voids in its entirety the proceedings under said section 243(h) of the Immigration and Nationality Act of 1952.

3. Appellant has been denied procedural due process of law in the proceedings under said section 243(h) of the Immigration and Nationality Act of 1952 in that:

a. The Assistant Commissioner Border Patrol and Detention could have based his decision in whole

or in part upon the letter from the Korean Consul General attached to the Return to the Order to Show Cause as Exhibit D. Appellant never saw this letter; it was received after the close of the interrogation and appellant had no opportunity to examine concerning it or the letter from the Immigration Service which prompted it.

b. Said letter from the Korean Counsul General was not "evidence"; a decision in any way based upon it was in violation of applicable regulations.

c. Robert L. Needham in making Findings of Fact, Exhibit A attached to Return to Order to Show Cause garbled and misinterpreted the material and positive testimony of Dr. Frank E. Williston.

d. Appellant was denied procedural due process in that he was never advised until almost the date of his attempted deportation of the decision of Assistant Commissioner, W. F. Kelly, nor did he have a chance to move to reopen or reconsider as given by 8 C.F.R., 6.21(a).

/s/ KENNETH A. MacDONALD,
Of MacDonald, Hoague & Bayless, Attorneys for
Johsel Namkung, Appellant.

Copies received.

[Endorsed]: Filed July 26, 1954.

[Title of District Court and Cause.]

CERTIFICATE TO RECORD
ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit, and Rule 75(o) of the Federal Rules of Civil Procedure and stipulation of counsel, I am transmitting herewith the following original documents as the record on appeal from the final judgment denying application for writ of habeas corpus, filed June 3, 1954, to the United States Court of Appeals for the Ninth Circuit at San Francisco, said papers being identified as follows:

1. Petition for Writ of Habeas Corpus, filed Mar. 26, 1954.
2. Order to Show Cause, filed Mar. 26, 1954.
3. Return to Order to Show Cause with following exhibits attached:

Exhibit "A"—Transcript of Dec. 2, 1953, interview with Johsel Namkung.

Exhibit 2—Affidavit of Johsel Namkung dated April 23, 1953.

Exhibit 3—Affidavit of Johsel Namkung, dated Oct. 27, 1953.

Exhibit "B"—Warrant of Deportation, dated April 8, 1953.

Exhibit "C"—Forwarding of Recommendation of Immigration Officer to Washington, D. C.

Exhibit "D"—Memorandum forwarding letter from Korean Consul General.

Exhibit "E"—Decision of Assistant Commissioner W. F. Kelly.

4. Amended Return of Respondent, filed April 13, 1954, with Exhibit "A" attached, said exhibit consisting of the following documents:

Ex. 1. Letter from brother of Johsel Namkung in Korean, as translated by Johsel Namkung.

Ex. 4. Newspaper story, Seattle Times, November 5, 1953.

Ex. 5 Newspaper story, Seattle Times, November 5, 1953.

9. Traverse, filed April 30, 1954.

11a. Stipulation as to agreed matters of fact, filed June 1, 1954.

12. Order Denying Writ of Habeas Corpus.

13. Notice of Appeal, filed June 3, 1954.

14. Deposit for Costs on Appeal, filed July 1, 1954.

15. Cost Bond on Appeal, filed July 2, 1954. (\$200.00 cash by Pet'r.).

16. Stipulation extending time for docketing record on Appeal to August 2, 1954, filed July 2, 1954.

17. Order Extending Time for Docketing Record on Appeal to August 2, 1954, filed July 2, 1954.

18. Stipulation of Designation of Record to be contained in Record on Appeal, filed July 26, 1954.

19. Concise Statement of Points on Which Appellant Intends to Rely.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for preparation of the record on appeal in this cause, to wit: Filing fee, Notice of Appeal, \$5.00, and that said amount has been paid to me by counsel for the appellant.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 26th day of July, 1954.

[Seal]

MILLARD P. THOMAS,
Clerk.

Chief Deputy.

By /s/ TRUMAN EGGER,

[Endorsed]: No. 14,459. United States Court of Appeals for the Ninth Circuit. Johsel Namkung, Appellant, vs. John P. Boyd, District Director of Immigration and Naturalization at the Port of Seattle, State of Washington, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed July 28, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 14,459

THE UNITED STATES OF AMERICA ex rel.
JOHSEL NAMKUNG,

Petitioner-Appellant,

vs.

District Director of Immigration and Naturalization
at the Port of Seattle, State of Washington,
JOHN F. BOYD,

Respondent-Appellee.

ADOPTION OF CONCISE STATEMENT OF
POINTS AND DESIGNATION OF REC-
ORD ON APPEAL

Appellant, Johsel Namkung, through his attorney of record, Kenneth A. MacDonald, in compliance with Rule 17 (6), Rules of Practice of United States Court of Appeals for the Ninth Circuit, does by this instrument adopt the Concise Statement of Points on Which Appellant Intends to Rely, it being Clerk of Court paper #19 in the above-entitled action in the United States District Court for the Western District of Washington, Northern Division, and it having been transmitted to the above-entitled Court on the 26th day of July, 1954, by Millard P. Thomas, Clerk of said District Court.

Appellant through his attorney of record hereby adopts the Designation of Record to be contained in Record on Appeal as set forth in the Stipulation of Designation of Record filed in the above-mentioned District Court of Washington, said Stipulation being clerk of court's paper #18, it having been transmitted to the above-entitled Court on the 26th day of July, 1954, by Millard P. Thomas, Clerk of said District Court.

Dated in Seattle, Washington, this 5th day of August, 1954.

/s/ KENNETH A. MacDONALD,
Attorney for Appellant.

[Endorsed]: Filed August 7, 1954.